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Constitutional Principles and Instruments of Tax Planning and Their Legal Effects in COMPANY LIFE

CONSTITUTIONAL TAX PRINCIPLES AND TAX PLANNING: LIMITS, POSSIBILITIES AND CONSEQUENCES IN THE BRAZILIAN LEGAL SYSTEM - Published Article

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May this work contribute significantly to the advancement of knowledge in this area and to the benefit of the academic and professional community.

With gratitude and appreciation,

Walternilton Goiabeira Ferro

ABBREVIATIONS

ABBREVIATION	MEANIN	PAGE
ER	Enterprise Resource Planning	11
IBS	Tax on Goods and Services	11
IFRS	International Accounting Standards	11
OECD	Organization for Cooperation and Development	12
IBS	Tax on Goods and Services	13
IS	Selective	13
ROI	Return on Investment	13
ES	Environmental, Social, and Governance	18
CARF	Administrative Council for Tax Appeals	18
CAPES	Coordination for the Improvement of Higher Education Personnel	22
SCIELO	Scientific Electronic Library Online	22
BDTD	Brazilian Digital Library of Theses and Dissertations.	22
Supreme Federal Cour t	Supreme Federal Court	22
ST	Superior Court of Justice.	22
ADI	Direct Action of Unconstitutionality,	22
DIFAL	Tax on the Circulation of Goods and Services	28
VA	Value Added Tax	31
ICMS	Tax on Transactions related to the Circulation of Goods and on the Provision of Transportation Services Interstate and Intermunicipal Communication	38
GAAR	General Anti-Avoidance Rule	38

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ABSTRACTO

Esta tesis doctoral investiga los instrumentos de planificación fiscal y sus efectos jurídicos en las empresas brasileñas, en un contexto de complejidad normativa, incertidumbre jurídica y transformaciones legislativas significativas, tales como la Enmienda Constitucional N.º 132/2023. El problema de investigación se centra en identificar qué instrumentos de planificación fiscal pueden ser adoptados de manera legal y estratégica, así como sus efectos jurídicos y económicos, especialmente a la luz de las interpretaciones del Servicio de Ingresos Federales y de las decisiones de los tribunales superiores y del Consejo Administrativo de Recursos Fiscales (CARF). El objetivo general consiste en analizar críticamente estos instrumentos, evaluando sus efectos jurídicos, económicos y estratégicos, con miras a proponer prácticas fiscalmente eficientes y jurídicamente sólidas. La metodología adoptada es de naturaleza cualitativa, exploratoria y descriptiva, basada en la investigación bibliográfica, el análisis documental de la legislación (Constitución Federal, Código Tributario Nacional) y el análisis jurisprudencial de fallos paradigmáticos del Consejo Administrativo de Recursos Fiscales (CARF) y del Supremo Tribunal Federal (STF), especialmente aquellos que abordan la teoría del propósito empresarial, la cláusula general antielusión (artículo 116, párrafo único, del Código Tributario Nacional) y la responsabilidad de los administradores. El marco teórico explora los principios tributarios constitucionales (legalidad, capacidad contributiva, igualdad, irretroactividad, no confiscatoriedad), con énfasis en las innovaciones introducidas por la Reforma Tributaria (Enmienda Constitucional N.º 132/2023), la cual constitucionalizó principios tales como la simplicidad, la transparencia, la justicia fiscal, la cooperación federal y el desarrollo sostenible. La investigación profundiza también en los conceptos de elusión fiscal (lícita) frente a la evasión fiscal (ilícita), analizando los límites de la planificación fiscal a la luz de la teoría de la primacía de la sustancia sobre la forma y del principio del propósito empresarial. Los resultados demuestran que, si bien la planificación fiscal constituye un derecho legítimo del contribuyente, la falta de regulación específica de la cláusula antielusión y la jurisprudencia inestable del Consejo Administrativo de Recursos Fiscales (CARF) generan incertidumbre jurídica y subjetividad en el análisis fiscal, especialmente en materias tales como la amortización del fondo de comercio mediante el uso de sociedades instrumentales y las reorganizaciones corporativas. La investigación evidencia que la ausencia de parámetros objetivos dificulta la distinción entre la elusión fiscal lícita y las prácticas abusivas, incrementando los riesgos de fiscalizaciones y litigios. El análisis de la jurisprudencia reciente revela, asimismo, una tendencia hacia un mayor rigor en la exigencia de responsabilidad a los administradores, requiriendo la prueba de dolo, fraude o abuso de poder para la reorientación de la actuación fiscal. Las consideraciones finales indican que, para ser legítima, la planificación fiscal debe cumplir tres requisitos fundamentales: la estricta observancia de la legalidad, la existencia de un propósito empresarial sustancial y documentado, y la transparencia contable y fiscal. Se concluye que la construcción de un entorno empresarial más seguro y eficiente depende no solo de buenas prácticas de cumplimiento corporativo, sino también de avances legislativos y jurisprudenciales que establezcan criterios más claros y objetivos respecto a los límites de la planificación fiscal, equilibrando el derecho a la eficiencia fiscal con el deber de contribuir a la sostenibilidad del sistema tributario.

Palabras clave: Planificación fiscal, Propósito empresarial, Seguridad jurídica.

ABSTRACT

This doctoral thesis investigates tax planning instruments and their legal effects on the lives of Brazilian companies, in the face of a scenario of normative complexity, legal uncertainty, and significant legislative transformations, such as Constitutional Amendment No. 132/2023. The research problem focuses on identifying which tax planning instruments can be adopted legally and strategically, as well as their legal and economic effects, especially in light of the interpretations of the Federal Revenue Service and the decisions of the superior courts and the Administrative Council of Tax Appeals (CARF). The general objective is to critically analyze these instruments, evaluating their legal, economic, and strategic effects, with a view to proposing fiscally efficient and legally sound practices. The methodology adopted is qualitative, exploratory, and descriptive in nature, based on bibliographic research, documentary analysis of legislation (Federal Constitution, National Tax Code), and jurisprudential analysis of paradigmatic rulings from CARF and the Federal Supreme Court (STF), particularly those dealing with the business purpose doctrine, the general anti- avoidance rule (Article 116, sole paragraph, of the National Tax Code), and the liability of managers.The theoretical foundation explores constitutional tax principles (legality, ability to pay, isonomy, nonretroactivity, non-confiscation), with an emphasis on the innovations introduced by the Tax Reform (Constitutional Amendment No. 132/2023), which elevated principles such as simplicity, transparency, tax justice, federative cooperation, and sustainable development to constitutional status. The research also delves into the concepts of tax avoidance (lawful) versus tax evasion (unlawful), analyzing the limits of tax planning in light of the substance-over-form doctrine and business purpose. reorganizations. The research shows that the absence of objective parameters makes it difficult to distinguish between lawful tax avoidance and abusive practices, increasing the risks of tax assessments and litigation. The analysis of recent jurisprudence also reveals a trend towards stricter liability for managers, requiring proof of intent, fraud, or abuse of power for the redirection of tax enforcement. The final considerations indicate that, to be legitimate, tax planning must meet three fundamental requirements: strict compliance with legality, the presence of a substantial business purpose that is documented, and accounting and fiscal transparency. It is concluded that building a safer and more efficient business environment depends not only on good corporate compliance practices but also on legislative and jurisprudential progress that establishes clearer and more objective criteria regarding the limits of tax planning, balancing the right to fiscal efficiency with the duty to contribute to the sustainability of the tax system.

Keywords: Tax Planning. Tax Avoidance. Business Purpose. Legal Certainty.

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1. INTRODUCTION

In today's highly competitive environment, the economic and financial sustainability of companies largely depends on their ability to adopt efficient tax management strategies. Brazil, notoriously known for having one of the most complex tax systems in the world, imposes daily challenges on organizations in fulfilling their tax obligations, making tax planning not only a relevant tool, but essential for business survival and growth.

Tax planning, as a set of lawful practices aimed at reducing the tax burden through tax avoidance, should be understood as an expression of the economic and legal rationality of companies in relation to the tax system. Unlike tax evasion—which is an illegal practice—tax planning is based on legality and efficiency, operating through legitimate mechanisms such as corporate reorganizations, appropriate choice of tax regime, tax incentives, and strategic legal structures. When used correctly, these instruments contribute not only to tax savings but also to strengthening corporate governance and accounting transparency.

Advances in the field of tax planning in recent years have been remarkable. With the support of analytical technologies, tax intelligence, and digital compliance platforms, the mapping of tax risks and the simulation of scenarios have become more precise and agile. In this context, the growing importance of ERP (Enterprise Resource Planning) systems integrated with accounting and tax areas stands out, allowing companies to anticipate, monitor, and strategically respond to tax authority requirements. Furthermore, the development of tax algorithms, big data, and artificial intelligence enables a new paradigm in tax management, which is becoming not only reactive but eminently predictive.

Alongside technological advancements, there has been a refinement in the jurisprudence of higher courts and a normative maturation regarding the limits and possibilities of tax avoidance. National and international doctrine has contributed significantly to outlining the ethical and legal contours of tax planning, strengthening the notion that tax law should be interpreted in light of the constitutional principles of legality, ability to pay, free enterprise, and legal certainty. In this sense, instruments such as the economic interpretation of the norm, the analysis of substance over form, and the application of the anti-avoidance rule (such as article 116, sole paragraph, of the Brazilian Tax Code) have come to play a central role in analyzing the validity of implemented tax planning strategies.

Despite the benefits it provides, tax planning also presents significant legal challenges. The fine line between tax avoidance and tax evasion, especially in the face of complex operations and sophisticated corporate structures, demands a thorough legal and accounting assessment, under penalty of audits, penalties, and questions about the company's integrity.

Furthermore, the increasing activity of the Federal Revenue Service using data matching technologies and electronic audits demands a much more rigorous and systematic degree of tax compliance from companies than in previous decades.

In this context, the main objective of this thesis is to analyze the principal tax planning instruments available to Brazilian companies, investigating their legal, accounting, and economic effects. It seeks to understand how such mechanisms can be strategically applied, within legal limits, to mitigate tax burdens without compromising compliance and business integrity. The study will be conducted from a multidisciplinary perspective, combining fundamentals of tax law, business accounting, and strategic management.

The relevance of this topic is heightened by a constantly transforming institutional environment. The ongoing tax reform in Brazil, International Financial Reporting Standards (IFRS), OECD guidelines on Transfer Pricing, and the increasing accountability of managers for fiscal management actions point to a scenario where tax planning will be increasingly monitored, regulated, and linked to corporate governance practices. In this sense, understanding the legal effects of these instruments on the lives of companies becomes imperative for managers, lawyers, accountants, and other professionals involved in business decision-making.

The methodology adopted in this work is based on a qualitative and exploratory approach, using bibliographic review, document analysis, and business case studies, seeking to identify patterns, best practices, and risks associated with the adoption of tax planning strategies. The thesis is structured in chapters that cover the historical evolution of tax planning, legal and jurisprudential milestones, the most commonly used instruments today, their economic impacts, and the ethical and normative limits of their application.

By addressing tax planning instruments from a critical and technical perspective, this thesis aims to contribute to the academic and practical debate on the possibilities and limitations of this tool in the Brazilian business environment. The challenge is to build a tax planning model that is simultaneously efficient, legal, ethical, and sustainable—a challenge that requires not only technical knowledge but also legal sensitivity and a commitment to the principles governing the economic and tax order.

1.2 JUSTIFICATION

The contemporary business environment is characterized by increasing fiscal and tax complexity, resulting from constant legislative changes, controversial administrative interpretations, and increasingly stringent compliance requirements from the State. In this scenario, the fiscal management of Brazilian companies is challenged to seek strategies that guarantee legal compliance without compromising the competitiveness and financial health of organizations. It is in
this context that the relevance of [missing information - likely a specific tax strategy or tool] emerges.**tax planning**, understood as the set of lawful and legitimate acts aimed at minimizing the tax burden through more efficient economic and legal choices.

The theme**"Tax Planning Instruments and Their Legal Effects on the Life of a Company**This is justified, first and foremost, by the urgent need for a critical and strategic understanding of the national tax system, which, according to...Doing Business Report1(According to the World Bank (2020), tax compliance ranks among the most expensive and complex in the world. In Brazil, a medium-sized company spends, on average, more than 1,500 hours per year just to comply with tax obligations—a number significantly higher than the average for Latin America and OECD countries. This context directly affects the competitiveness and economic performance of companies, especially small and medium-sized enterprises, which face greater difficulties in adopting effective tax strategies.

Furthermore, the topic is situated within a historical context of**structural reform**
of the Brazilian tax system, with the enactment of Constitutional Amendment No.
132/20232The new legislation, which establishes the Tax on Goods and Services
(IBS) and the Selective Tax (IS), unifies taxes and profoundly alters the logic of consumption taxation. This new scenario demands that companies review their tax
practices and develop strategies compatible with the new regulatory framework, which confers...**relevance and direct applicability to the present research**.

The choice of topic is also justified by its scientific relevance, as it involves an interdisciplinary approach between Law, Accounting, Administration, and Economics. The analysis of**legal effects of tax planning instruments**This cannot be carried out in isolation; it is necessary to integrate knowledge about legal regimes, constitutional tax principles, international accounting standards (IFRS), corporate governance practices, and risk control. Therefore, the research will contribute to the academic field by offering a critical and applied systematization of the mechanisms available to companies in the Brazilian context.

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[1] *WORLD BANK. Doing Business 2020: Comparing Business Regulation in 190 Economies. Washington, DC: World Bank Group, 2020.*

[2] *BRAZIL. Constitutional Amendment No. 132, of December 20, 2023. Amends the National Tax System and provides other measures.*

Another relevant aspect is the**lack of uniformity in case law and administrative law regarding the limits of tax avoidance**This generates legal uncertainty for taxpayers and administrators. Several tax planning schemes are challenged by the Federal Revenue Service on the grounds of abuse of form, lack of business purpose, or simulated practice. However, the interpretation of these criteria is often subjective, compromising predictability and the right to free enterprise. As Barros Carvalho (2021) points out...3"Legal certainty is one of the principles most neglected by the tax administration, although it is among the most fundamental for balancing the power to tax and the right to do business."

Therefore, this thesis aims to discuss not only the available planning instruments, but also the**legal and jurisprudential criteria used to assess its legality and effectiveness**, promoting a critical reflection on the limits of the State's supervisory role. In line with the doctrine of Hugo de Brito Machado (2021)4It is understood that the interpretation of tax law must respect the principles of legality, specificity, and legal certainty, especially when dealing with complex business transactions.

In addition to the legal foundations, there is a**strategic and operational dimension** which makes the topic extremely relevant: well-structured tax planning allows companies to better allocate their resources, improve their cash flow, reduce tax liabilities, and increase their competitiveness in the market. This efficiency becomes even more crucial during periods of economic crisis, as observed during the COVID-19 pandemic, where companies with lower tax burdens and greater tax organization demonstrated greater resilience. According to a study by the Dom Cabral Foundation (2022)5
Companies with strategic tax management showed solvency and liquidity levels up to 30% higher than those that did not adopt similar practices.

The social relevance of the topic should also be highlighted. Corporate tax efficiency should not be confused with abusive or evasive practices. When carried out ethically and legally, tax savings enable job creation, increased investment, and a stronger domestic market, contributing to economic development and institutional stability. In this sense, the thesis seeks to emphasize the importance of... **Tax planning as a legitimate tool for business strengthening.**, capable of generating positive impacts for the entire production chain and for sustainable state revenue.

The research is also justified in light of**need to improve professional practices in**accounting, legal, and administrative areas. Many

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[3]*CARVALHO, Paulo de Barros. Course on Tax Law. 31st ed. São Paulo: Saraiva, 2021.*
[4]*MACHADO, Hugo de Brito. Tax Planning and Interpretation of Tax Law. São Paulo: Malheiros, 2021.*
[5]*DOM CABRAL FOUNDATION. Impacts of Tax Management on Business Performance. Technical Report. Belo Horizonte: FDC, 2022.*

Professionals often face difficulties in differentiating between the concepts of tax avoidance, tax evasion, and tax simulation, as well as in properly applying instruments such as estate planning via family holding companies, corporate reorganizations, choice of tax regime, or international profit transfer operations. This thesis aims, therefore, to offer technical and applicable content to assist these professionals in developing legally sound and economically efficient tax strategies.

Finally, the institutional relevance of the research is evident in its potential to contribute to...**public bodies, universities and business entities**in formulating more balanced fiscal policies and disseminating good tax practices. Based on case studies and current regulatory analysis, it will be possible to identify patterns of successful performance, propose recommendations for the business sector, and suggest criteria for regulatory interpretation that promote a greater balance between the State's revenue-raising needs and business autonomy.

In summary, this work is justified by its thematic relevance, practical importance, current legislation, conceptual complexity, and potential social and institutional impact. It is a contribution that seeks to balance theory and practice, offering a critical, technical, and applied analysis of tax planning instruments and their legal effects on business life, with a view to promoting a more rational, efficient, and legally secure business environment.

1.3 General Objective

To critically analyze the main tax planning instruments available in the Brazilian legal system, evaluating their legal, economic, and strategic effects on business life, with a view to proposing fiscally efficient, legally sound practices aligned with constitutional tax principles.

1.3.1 Specific Objectives

1. **Identify the main concepts and classifications of tax planning.**, distinguishing the practices of avoidance, evasion, and simulation in light of Brazilian doctrine and jurisprudence.
2. **To study the legal and constitutional foundations that legitimize tax planning.**, with emphasis on the principles of legality, specificity, free enterprise, legal certainty, and ability to pay.
3. **Mapping the most commonly used legal instruments by companies in the Brazilian context.**, such as corporate reorganizations, choice of tax regimes, asset holding companies, and interstate transactions.
4. **To analyze the legal and operational effects of tax planning on the life of companies.**considering aspects such as tax burden, tax liabilities, corporate governance, compliance, and competitiveness.
5. **Critically evaluate the performance of the Federal Revenue Service and the Judiciary.**Regarding the criteria used in the auditing and interpretation of tax planning practices, especially in relation to business purpose and abuse of form.
6. **Present real-world case studies.**that demonstrate the positive and negative impacts of adopting tax strategies on sustainability and business performance.
7. **To propose guidelines and best practices for the implementation of lawful and efficient tax planning.**, aimed at companies, accountants, lawyers, managers and regulatory bodies.

1.4 Research Problem

Given the complexity and rigidity of the Brazilian tax system,**What tax planning tools can companies legally, strategically, and securely adopt?** and**What are the legal and economic effects of its use in business life?**
...especially in light of the interpretations of the Internal Revenue Service and the decisions of the courts?

1.5 Thesis Hypotheses

- **H1 –**The proper use of tax planning tools, based on current legislation and business purpose criteria, can legally reduce the tax burden on companies without constituting tax evasion or simulation.

- **H2 –**The lack of regulatory clarity and legal uncertainty regarding the boundaries between lawful tax avoidance and unlawful tax evasion compromise the effectiveness of tax planning, increasing the risk of tax audits and legal disputes.

- **H3 –**Companies that adopt tax planning practices based on well-defined technical, legal, and accounting criteria demonstrate greater tax efficiency, better financial performance, and increased investment capacity.

- **H4 –**The existence of unstable case law and restrictive tax interpretations negatively impacts the predictability and legal certainty of tax planning instruments in Brazil.

1.6 Relationship between variables

The analytical structure of Academic Production seeks to understand**such as the use of tax planning tools (independent variable)**affects**legal, financial and operational results of companies (dependent variables)**These variables will serve as a basis for both theoretical and doctrinal analysis, as well as for any case studies or empirical approaches within the thesis.

Independent Variable

- **Tax Planning Tools Used**
  This refers to a company's use of formal and legal mechanisms to reorganize its tax structure in order to reduce its tax burden.
  Examples:

- Choosing a tax regime (Actual Profit, Presumed Profit, or Simplified National Tax System)
- Formation of family or asset holding companies
- Succession planning
- Corporate reorganizations (spin-offs, mergers, acquisitions)
- Legal acts with a business purpose
- Use of regional or sectoral tax incentives

Dependent Variables

1. Reduction of the Effective Tax Burden

- A measure of the direct financial impact of the strategies adopted on taxes due and paid.
- Indicators: Percentage of tax burden on gross revenue; annual tax savings.

2. Legal Security of Tax Transactions

- Level of perceived tax risk and number of tax assessments or disputes with the tax authorities.
- Indicators: existence of infraction notices; incidence of litigation; analysis of the legal compliance of the actions.

3. Economic and Financial Efficiency of the Company

- Assessing the impact of tax strategies on business performance.
- Indicators: liquidity, profit margin, return on invested capital (ROI), solvency.

4. Degree of Compliance with Current Tax Legislation

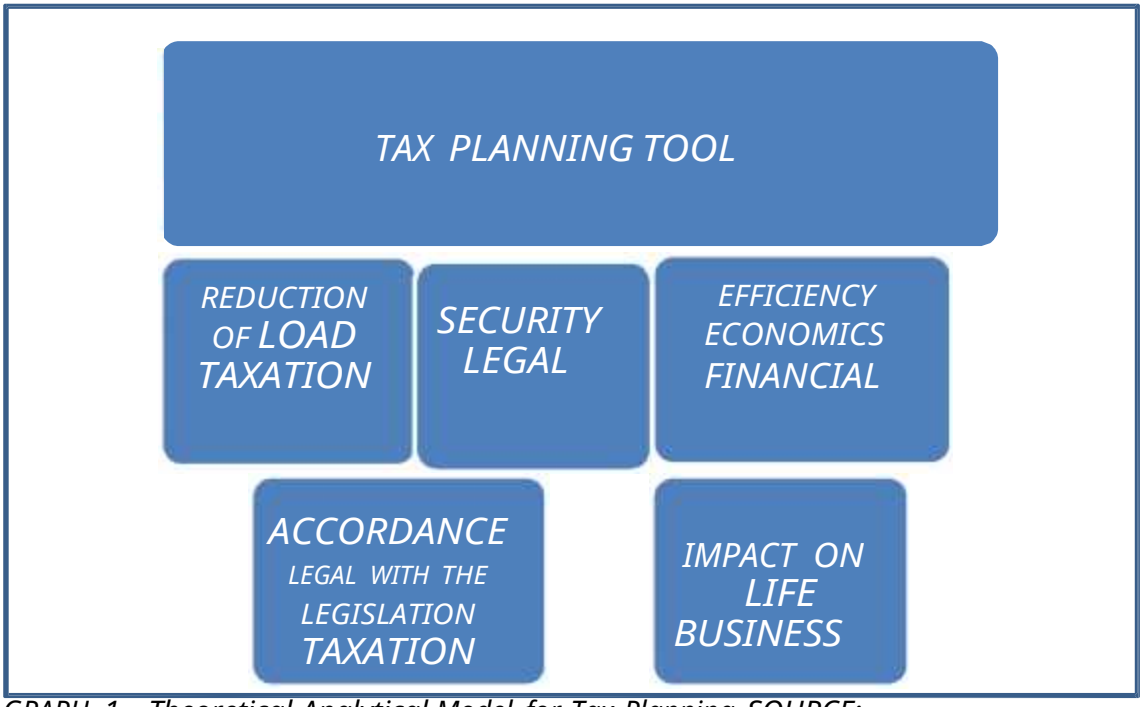
- Level of adherence of the company's tax practices to the legislation, case law, and regulations of the Federal Revenue Service.
- Indicators: presence of tax audits with positive results; legal opinions; absence of penalties.

5. Company Image and Reputation with Stakeholders

- Institutional impact of adopting tax strategies on the perception of investors, partners, clients, and society.
- Indicators: ESG assessments, sustainability reports, reputational analyses.

Below we describe the theoretical-analytical model of the research, represented

in a visual flowchart in Figure 1. It starts from the central independent variable — Tax Planning Tools—and unfolds its effects on the dependent variables, grouped into intermediate and final levels, highlighting the direct and indirect impacts on business life.



GRAPH 1 – Theoretical-Analytical Model for Tax Planning SOURCE: Model developed for this work

The Theoretical-Analytical Model

The theoretical-analytical model proposed for the thesis **"Tax Planning Instruments and Their Legal Effects on the Life of a Company**It starts from the premise that strategic decisions relating to a company's tax management

— particularly those linked to**tax planning**— They directly influence its operational, legal, economic, and institutional reality.

In this context, the **central independent variable** the model is represented by **Tax Planning Tools** These are understood as the set of lawful mechanisms used by companies to reorganize their structure and reduce their tax burden, provided that legal and constitutional limits are respected. Among these instruments, the following stand out: choice of tax regime, corporate reorganizations, formation of holding companies, use of tax incentives, and tax avoidance practices with a defined business purpose.

Based on this variable, the model unfolds into **five intermediate dependent variables**, which represent the main effects resulting from the adoption of such instruments:

- **Reduction of the Effective Tax Burden**–The most visible and direct consequence of tax planning, with immediate impacts on the company's cash flow and profitability.
- **Legal Security of Operations**–which involves minimizing tax risks, assessments, fines and litigation, by aligning the practices adopted with current legislation and prevailing case law.
- **Economic and Financial Efficiency**–translated into improved performance indicators, streamlined tax costs, and increased capacity for investment and innovation.
- **Compliance with Tax Legislation**–related to the degree to which practices adhere to legal, ethical, and regulatory frameworks, a crucial element in preventing tax evasion.
- **Corporate Image and Reputation**–An indirect but relevant consequence concerning the perception of investors, partners, clients, regulatory bodies, and civil society regarding the organization's tax practices.

These variables converge to the final instance of the model: the **Impacts on Business Life** This represents the synthesis of the legal, financial, strategic, and institutional effects resulting from the practice of tax planning. This final impact can be positive—when the planning is well-structured and legally sound—or negative—when the strategies constitute abuse of form, tax evasion, or violation of the business purpose principle.

Thus, the proposed model allows for a comprehensive and critical analysis of the issue, by linking the **technical instruments of tax planning** with the **concrete legal and practical effects** observed in the management and sustainability of companies in the contemporary Brazilian context.

1.7 RESEARCH METHODOLOGY

-Search Type

The research is classified according to its **nature as applied**, as it aims to generate knowledge geared towards solving practical problems related to corporate tax management, with a focus on **use and legal effects of tax planning instruments** Regarding the objectives, this is a research project. **exploratory and descriptive** with emphasis on **qualitative analysis** and in the empirical support of a documentary and bibliographic nature.

According to Gil (2010)6Exploratory research aims to provide greater familiarity with the problem, with a view to making it more explicit.7The qualitative approach, on the other hand, allows for a detailed interpretation of the observed phenomenon based on non-quantifiable data, such as legal discourse, legislation, doctrine, and jurisprudence².

-Methodological Approach

This investigation adopts a **qualitative-deductive method** which seeks to interpret the data from a previously consolidated normative theoretical framework. For Lakatos and Marconi (2003)8Deduction, as a method, starts from broad theoretical principles and arrives at specific conclusions, making it suitable for studies in normative areas such as Law.9.

The following data collection and analysis techniques will be employed:

-Bibliographic Research

The bibliographic research will be conducted based on established doctrinal works in the fields of tax law, accounting, and tax administration. The following authors form the theoretical foundation:

- **Hugo de Brito Machado**, author of Tax Law Course, which offers solid foundations on tax obligations, legality, tax avoidance and tax evasion;

- **Marcus Aurelius Greco**, which discusses the ethical and legal limits of tax planning from a business purpose perspective;

- **Ricardo Mariz de Oliveira**, which discusses the distinction between legality and abuse in tax operations;

6GIL, Antonio Carlos. Methods and techniques of social research. 6th ed. São Paulo: Atlas, 2010.

7MINAYO, Maria Cecília de Souza. The challenge of knowledge: qualitative research in health. São Paulo: Hucitec, 2001.

8LAKATOS, Eva Maria; MARCONI, Marina de Andrade.Scientific methodology4th ed. São Paulo: Atlas, 2003

9LAKATOS, Eva Maria; MARCONI, Marina de Andrade.Scientific methodology. 4th ed. São Paulo: Atlas,2003.

- **Silvio Crepaldi** which presents tax planning as a strategic management tool, with a technical and practical focus.

The bibliographic survey will also include scientific articles published in journals classified by CAPES, course completion papers, dissertations, and theses available in the SciELO, Google Scholar, and Brazilian Digital Library of Theses and Dissertations (BDTD) databases.

-**Documentary Research**

The documentary research will be conducted through the analysis of legal texts that regulate tax matters in Brazil, with emphasis on the following normative instruments:

- **Federal Constitution of 1988**, especially articles 150 to 156, which deal with the principles of legality, equality, ability to pay, prior notice and selectivity;
- **National Tax Code (Law No. 5.172/1966)**, which establishes the fundamental concepts of tax obligation, taxable event, tax base, tax avoidance, and interpretation of the rule;
- Complementary and ordinary laws that deal with tax regimes (Real Profit, Presumed Profit, Simples Nacional) and tax incentives;
- Normative instructions from the Federal Revenue Service and administrative guidelines from CARF (Administrative Council of Tax Appeals).
- **Case Law Analysis**

The case law analysis will be based on decisions from the higher courts (STF and STJ) and the CARF, especially in landmark cases regarding:

- Abuse of form and disregard for corporate structures;
- Tax planning lacking a business purpose;
- Interpretation of transactions involving goodwill, corporate reorganizations, and indirect taxation;
- Disagreements regarding tax avoidance versus tax evasion.

Case law will be examined according to the principles of legal hermeneutics, allowing for the identification of trends in the interpretation of business practices by the Judiciary and the Tax Administration.

-**Research Site**

The research will be in **national territory**, focusing on medium and large-sized Brazilian companies in the industrial, commercial, and service sectors. The time frame will cover the period between**2010 and 2025**allowing for a more up-to-date analysis of the impact of regulatory reforms, such as:

- THE **Law No. 12.973/2014**, which changed the accounting tax legislation;
- THE **Economic Freedom Law (No. 13.874/2019)** which directly impacts the ways in which companies are formed and operate;
- The advancement of administrative and judicial case law regarding the legality and abuse of tax planning.
- **Justification of the Methodology**

The choice of a qualitative approach, grounded in bibliography and legal documents, is due to the nature of the subject: tax planning involves abstract legal concepts (such as legality, purpose, and abuse of form), the interpretation of which requires a solid doctrinal foundation. Jurisprudential analysis provides the link between theory and practice, revealing the legal risks and legitimate opportunities for companies.

According to Severino (2007), qualitative research values the interpretative process about reality and considers the active role of the researcher in the construction of knowledge.10This perspective is essential for a critical understanding of the application of tax instruments, their potential, and their legal limitations.

1.8 RESEARCH DELIMITATION

This research is limited to the study of **Legal tax planning tools used by medium and large-sized Brazilian companies.**, specifically from the perspective of **legality, cost-effectiveness and legal certainty**, between the years of**2010 and 2025**The objective is to analyze **How do such instruments legally impact the lives of companies?**, considering normative, doctrinal, jurisprudential and practical aspects.

The investigation will focus on:

- **Geographically** no **Brazilian national territory**, encompassing federal legislation and, to a lesser extent, state and municipal legislation that directly affects tax planning strategies.
- **Temporally** during the period of**2010 to 2025**, a necessary framework to understand the impact of legal changes, such as the enactment of **Law No. 12.973/2014**a**Complementary Law No. 123/2006**(with its changes), the **Law No. 13.874/2019 (Economic Freedom Law)**as well as recent decisions of **CARF, STJ and STF** involving the use or abuse of tax structures.

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10 *MINAYO, Maria Cecília de Souza. The challenge of knowledge: qualitative research in health. São Paulo: Hucitec, 2001.*

- **Thematically** to the analysis of**tax avoidance tools** Admitted under Brazilian law, differentiating them from tax evasion and simulation, with emphasis on practices such as:

  The choice of tax regime (Actual Profit, Presumed Profit, Simplified National Tax Regime);

  Corporate reorganizations with tax implications (spin-offs, mergers, acquisitions, holding companies);

  The Planning involving **agio** operations with **favored jurisdiction**, and the use of **tax incentives**.

-**Conceptually**, from the perspective that tax planning is a **legitimate instrument of business management**...provided that it does not violate the constitutional principles of legality, morality, good faith, and purpose. The research aims to establish a theoretical and practical framework that differentiates **law ful planning** of abusive or deceitful conduct.

-**From an epistemological point of view** the investigation will be **qualitative**, with documentary and doctrinal support, **excluding analyses of a purely econometric or statistical nature.**, except in cases where quantitative data are necessary to illustrate administrative and judicial decisions or to contextualize the tax burden on the companies studied.

- **In the field of case law** Only decisions will be studied. **published and available in official sources**, especially from CARF, STJ and STF, that deal directly or indirectly with the legality of tax planning instruments, with emphasis on the application of **general anti-avoidance clause**(art. 116,

  §1, of the CTN), in the constitutional tax principles and in the notion of **business purpose**.

This delimitation aims to guarantee e **technical and theoretical feasibility** to the research, preserving its analytical depth without compromising the legal and managerial scope necessary to understand the practical effects of tax planning in contemporary business life.

1.8.1 RESEARCH LIMITATIONS

This research, although comprehensive in its treatment of **Tax planning instruments and their legal effects on the life of the company.**, it presents **methodological, conceptual, empirical and operational limitations** which are important for the correct interpretation of their results and conclusions.

-**Thematic Limitation**

This investigation **It does not intend to cover all existing forms of tax planning.**in the Brazilian legal system, but only those **legitimate business strategies**, analyzed from the perspective of Tax Law, Administration, and Accounting. Thus, **Tax evasion, tax fraud, tax evasion, and illegal simulation practices are not the subject of direct study.**, even though they are mentioned for comparative and conceptual purposes.

Additionally, **International tax issues will not be discussed in depth.**, such as cross- border tax planning transfer pricing, or tax avoidance policies practiced in tax havens by multinational corporations, except when mentioned in decisions of the CARF
(Administrative Council of Tax Appeals) or the STF (Supreme Federal Court) that address the national context.

-**Geographic and Legal Limitation**

The research is **limited to the Brazilian legal system**, not taking into account foreign tax laws or international treaties, even though such rules may eventually be mentioned for illustrative purposes.

The emphasis is on federal legislation and, complementarily, on state and municipal regulations only when they directly interfere with strategic tax planning instruments, such as tax incentives or special regimes.

-**Time Limitation**

The research timeframe is limited to the period between the years of**2010 and 2025**Although this approach allows for the analysis of significant transformations that have occurred in tax legislation and jurisprudence, it **does not include a detailed historical account of previous periods.**, such as the tax reforms of the
1990s or the changes that occurred during the implementation of the Real Plan, except when relevant as a theoretical reference.

-**Methodological Limitation**

The methodological approach of the research is **qualitative and documentary**, anchored in doctrine, legislation, and jurisprudence. For this reason:

- **Complex quantitative analyses will not be used.**, such as econometric models or advanced tax simulations, since the objective is to interpret the legal effects of the instruments and not to measure, in absolute values, the tax impacts of each mechanism;

- The research **It will not include interviews with businesspeople, auditors, or public administration officials.** Although documentary case studies can be used based on secondary sources, such as public administrative and judicial proceedings;
- Also **Confidential or internal data from private companies will not be analyzed.**, respecting the ethical and legal boundaries of academic research.
- **Doctrinal and Jurisprudential Limitation**

Although the research seeks to be based on renowned authors in Tax Law, Accounting, and Administration, **There are limitations stemming from the existing doctrinal divergence on the subject.**, especially with regard to defining the boundaries between avoidance and evasion, the concept of business purpose, and the application of the general anti-avoidance clause.

From a case law perspective, there is a limitation arising from...**Inconsistency or contradiction between administrative and judicial decisions.** This can compromise predictability and hinder the standardization of criteria for interpreting the legality of the instruments.

-**Technological and Accounting Limitations**

Finally, the research **It does not intend to delve into the use of tax software, artificial intelligence, or automated tax compliance systems.**, despite recognizing its growing importance in operationalizing tax planning. The focus is on **legal and conceptual analysis**, and not in specific technological tools.

The limitations indicated above **They do not diminish the relevance and validity of the present research.** However, they establish the frameworks within which the analyses were conducted. They ensure that...**coherence between objectives, methods and results**, preserving the scientific rigor and interpretative clarity necessary for the findings to effectively contribute to academia and business practice.

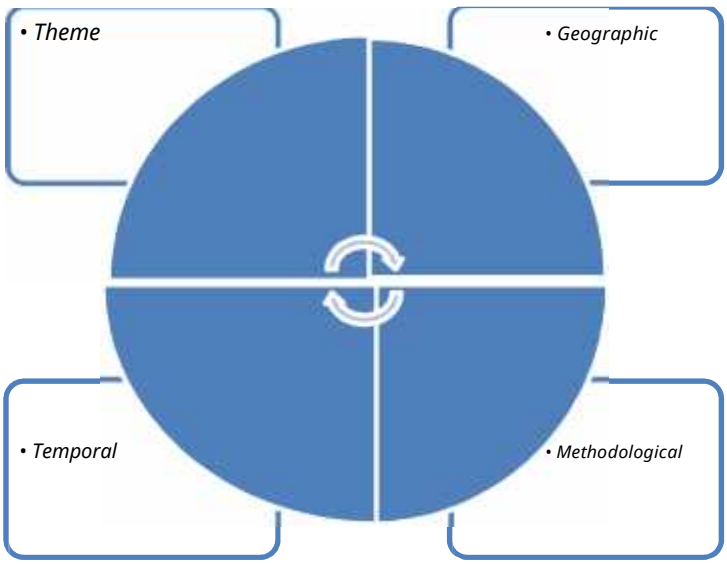

Figure 2 – Limitations of the Research

1.9 RESEARCH STRUCTURE

INTRODUCTION The thesis comprises: Presentation of the topic and its social, legal, and economic relevance; Contextualization of the Brazilian tax problem; Formulation of the research problem; Hypotheses, objectives (general and specific), and variables; Scientific and applied justification of the research; Delimitation and limitations of the study; Methodology used; Structuring of the thesis chapters.

CHAPTER 1 – THEORETICAL AND CONCEPTUAL FOUNDATIONS

TAX PLANNING. 1.1. The Brazilian National Tax System; Constitutional tax principles (legality, ability to pay, equality, etc.); Types of taxes and powers (Brazilian Federal Constitution of 1988 and Brazilian Tax Code).**1.2.**Concept, Nature and Objectives of Tax Planning**;** Doctrinal and normative definitions; Legitimate purposes of planning: efficiency, legality, business sustainability.**1.3.** Tax Planning Methods**;** Tax avoidance: lawful and predictable planning; Tax evasion: fraud, simulation, and willful concealment; Aggressive planning and abuse of legal form (substance over form).**1.4.**The General Anti-Avoidance Clause**(Art. 116, §1 of the CTN);**Legislative history and controversial application; Case law from CARF, STJ, and STF.**1.5.**Business Purpose and Corporate Reorganizations**;** Fundamentals and limits; Tax authorities' role in disregarding corporate acts.

CHAPTER 2 – THEORETICAL AND CONCEPTUAL FOUNDATIONS

TAX PLANNING; 2.1 Constitutional Tax Principles: Foundations, Historical Evolution, and Control by the Supreme Federal Court; 2.2 Updated Review; 2.3 Analysis of the Evolution of Legislation; 2.4 General Clause; 2.5 Business Purpose.

CHAPTER 3 – THE LEGAL EFFECTS OF TAX PLANNING ON THE LIFE OF THE COMPANY;3.1 Legal Security; 3.2 Responsibilities of Administrators; 3.2.1
Theory of Disregard of Legal Personality; 3.2.2 Joint and Several Tax Liability; 3.3 Procedure for Establishing Liability; 3.4 Impact on Business Sustainability.

CHAPTER 4 – JURISPRUDENTIAL ANALYSIS AND CASE STUDY;4.1 Business Purpose Theory; 4.2 Case Study CARF Ruling No. 2402-006.179; 4.3 Case Study CARF Ruling No. 1201-007.27; Constitutional Tax Principles:

CHAPTER 5 – FINAL CONSIDERATIONS AND CONTRIBUTIONS OF THE RESEARCH; 5.1Critical Evaluation; 5.2 Verification of Hypotheses and Variables; 5.3 Theoretical and Practical Contributions; 5.4 Limitations of the Research and Future Research.

CHAPTER 2 – THEORETICAL AND CONCEPTUAL FOUNDATIONS OF TAX PLANNING

Tax planning is an essential tool for the strategic financial management of organizations, being fundamental for the legal and ethical minimization of the tax burden. This chapter explores the theoretical and conceptual foundations of tax planning, addressing the principles, methods, and strategies that guide business decisions in the pursuit of tax optimization. Understanding these fundamentals is crucial not only for the economic efficiency of companies but also for compliance with current tax regulations, promoting responsible and sustainable tax management.

2.1. The Brazilian National Tax System

Constitutional Tax Principles: Foundations, Historical Evolution, and Control by the Supreme Federal Court.

The 1988 Federal Constitution consolidated a tax system structured on principles that limit the power to tax and guarantee legal certainty, fiscal justice, and equality. These principles, of liberal origin and inspired by post-war European constitutions, have evolved both in doctrine and jurisprudence, especially through decisions of the Supreme Federal Court (STF), which exercises control over the constitutionality of tax regulations and acts as the guardian of these foundations.

2.1.1. Principle of Tax Legality

The principle of legality, provided for in article 150, item I, of the Federal Constitution, establishes that "without a law establishing it, there is no tax". Its origin dates back to the clause **of due process of law** enshrined in the English Magna Carta of 1215, according to which only Parliament could institute taxes.1.

In the Brazilian context, the Supreme Federal Court (STF) has repeatedly reaffirmed the requirement of a formal law for the creation or increase of taxes. A prime example is the judgment in ADI 1075/DF, where the STF declared unconstitutional the collection of contributions without express legal provision.2.

2.1.2. Principle of Taxpaying Capacity

The ability to pay, enshrined in Article 145, §1 of the Brazilian Federal Constitution of 1988, dictates that taxes must respect the economic capacity of taxpayers. This principle emerged more clearly in the social constitutions of the 20th century, especially in the German Weimar Constitution (1919).3.

The Brazilian Supreme Court (STF) has applied the principle of ability to pay as a criterion of reasonableness and fiscal justice. In RE 566.622/RS (Topic 385), for example, the

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[1] ***Machado, Hugo de Brito***. *Course on Tax Law. 39th ed. São Paulo: Malheiros, 2018, pp. 112-114.*
[2]***Supreme Federal Court.****ADI 1075/DF. Rel. Min. Ilmar Galvão, j. 08/17/1994*
[3]***Torres, Heleno Taveira.*** *Constitutional Tax Law. São Paulo: Saraiva, 2019, p. 181*

The Supreme Court has ruled that retirees with serious illnesses are exempt from income tax, considering their lower economic capacity.4.

2.1.3. Principle of Equality (Tax Equality)

The principle of tax equality, or isonomy, stems from Article 150, item II, of the Brazilian Federal Constitution, and prohibits unequal treatment between taxpayers in equivalent situations. This principle derives from Enlightenment ideals and the French Revolution, and has been consolidated in modern constitutions as an instrument of social justice.5.

The Supreme Federal Court (STF) has extensive case law on this subject. Of particular note is RE
606.107/PR, which established that companies opting for the SIMPLES tax regime cannot be discriminated against in public tenders, under penalty of violating the principle of tax equality.6.

2.1.4. Principle of Priority

Established in Article 150, item III, subparagraphs "b" and "c" of the Brazilian Federal Constitution, the principle of prior notice prevents taxes from being levied in the same fiscal year as the publication of the law (annual prior notice) or before 90 days (ninety-day prior notice). It emerged as a guarantee of predictability and fiscal security, with roots in the parliamentary practices of England and France in the 18th century.7.

In the judgment of RE 566.007/RS, the STF (Supreme Federal Court) decided that the increase in the COFINS (Contribution to Social Security Financing) rate is subject to the ninety-day prior notice rule, reaffirming its protective character for the taxpayer.8.

2.1.5. Principle of Non-Confiscation

The principle of non-confiscation (Article 150, IV, of the Brazilian Constitution) prevents the State from using taxes for expropriatory purposes. This is a limit to the State's fiscal voracity, inspired by the property rights guaranteed in the liberal constitutions of the 19th century.9.

The Brazilian Supreme Court (STF) has already declared unconstitutional tax rates considered confiscatory, as in the case of ADI 2.010/RS, which dealt with the collection of ICMS (a Brazilian state tax) on electricity at rates exceeding 30%.10.

2.1.6. Principle of Tax Transparency

Although not explicitly mentioned in the Constitution, tax transparency stems from principles such as morality and publicity (Article 37, caput, CF), and manifests itself in the obligation to inform the consumer about the taxes levied on transactions.

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[4] ***Supreme Federal Court.*** *RE 566.622/RS. Rel. Min. Ricardo Lewandowski, j. 19.10.2011*

[5] ***Carrazza, Roque Antonio.*** *ICMS19th ed. São Paulo: Malheiros, 2017, p. 73*

[6] ***Supreme Federal Court.*** *RE 606.107/PR. Rel. Min. Dias Toffoli, j. 02/26/2014*

[7] ***Amaro, Luciano.*** *Brazilian Tax Law24th ed. São Paulo: Saraiva, 2018, pp. 101-102.*

[8] ***Supreme Federal Court.*** *RE 566.007/RS. Rapporteur: Justice Cármen Lúcia, decided on May 18, 2011.*

[9] ***Marcus Aurelius Greco.*** *Principles of Tax Law. São Paulo: Dialética, 2017, p. 89.*

[10] ***Supreme Federal Court.*** *ADI 2010/RS. Rel. Min. Eros Grau, j. 02.02.2005.*

Law No. 12,741/2012 made it mandatory to include the amount of taxes on tax documents. The Brazilian Supreme Court recognized the constitutionality of the law in ADI 5,163/DF, reinforcing the consumer's right to information.11.

The historical evolution of constitutional tax principles reveals the transition from an authoritarian taxation model to a legal system based on legality, equity, and transparency. The Supreme Federal Court plays an essential role in consolidating these principles, acting as the highest instance of control and benchmarking of sub-constitutional norms in relation to the fundamental values of the 1988 Constitution.

2.2 Updated Review of Constitutional Tax Principles: Post-Constitutional Amendment No. 132/2023 and Supreme Federal Court rulings until 2024

The 1988 Federal Constitution established a taxation model guided by principles that act as fundamental guarantees for the taxpayer and mechanisms for controlling the power to tax. From 2023 onwards, with the promulgation of... **Constitutional Amendment No. 132** The system underwent a reconfiguration that, in addition to restructuring taxes, incorporated...**new constitutional tax principles expressed** in the constitutional text, broadening the normative and hermeneutical scope of the matter.

2.2.1. Principle of Tax Legality (Art. 150, I, CF/88)

Legality remains the structural axis of the tax system. No tax can be instituted or increased without a formal law. The Brazilian Supreme Court reaffirmed this principle in 2023 when judging the constitutionality of...**collection of DIFAL-ICMS (RE 1287019/SP)**, deciding that the requirement would only be valid after the enactment of Supplementary Law No. 190/2022 and respecting the principles of **nineagesimal and annual anteriority12**.

2.2.2. Principle of Taxpaying Capacity (Art. 145, §1, CF/88)

The principle was reaffirmed in several decisions of the Supreme Federal Court (STF), especially regarding the selectivity of indirect taxes and the income tax exemption for those with serious illnesses. In the judgment of **Topic 1184**The Brazilian Supreme Court (STF) modulated the effects of the revocation of income tax exemption for people with serious illnesses, seeking to reconcile the ability to pay with legal certainty.13.

2.2.3. Principle of Tax Equality (Art. 150, II, CF/88)

The Brazilian Supreme Court reiterated the unconstitutionality of discriminatory treatment without reasonable grounds. **ADI 7374**The Court understood that the reduction in ICMS (a Brazilian sales tax) for beers with orange juice violated the principle of equality, as it benefited specific companies to the detriment of others located outside the state.14.

2.2.4. Principle of Prior Notice (Art. 150, III, "b" and "c", CF/88)

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[11] ***Supreme Federal Court.*** *ADI 5,163/DF. Rel. Min. Luiz Fux, j. 11/24/2016*

[12] *STF. RE 1287019/SP (Topic 1253). Rapporteur Justice Alexandre de Moraes. Decided on 08/02/2023.*

[13] *Supreme Federal Court (STF). General Repercussion Theme 1184. Rapporteur: Justice Luís Roberto Barroso. Decided on June 16, 2023.*

[14] Supreme Federal Court (STF). Direct Action of Unconstitutionality (ADI) 7374. Rapporteur: Justice Edson Fachin. Decided on November 10, 2023.

Taxpayer protection against abrupt changes in the tax burden is strengthened. The Supreme Federal Court (STF) ruled in the case of...**DIFAL (RE 1287019)**that the charge can only be levied after the specific rule comes into effect and the ninety-day prior notice period has been fulfilled, even after LC 190/202215.

2.2.5. Principle of Non-Confiscation (Art. 150, IV, CF/88)

This principle has been important in preventing abusive tax increases. In 2023, the Supreme Federal Court (STF) ruled...**ADI 6365/AM**, declaring the collection of a state "environmental contribution" unconstitutional, arguing that it constitutes disguised confiscation and a misuse of revenue-raising purposes.16.

2.2.6. Principle of Transparency (Art. 150, §5 and art. 145, §3, CF/88)

Following Constitutional Amendment 132/2023, the principle of transparency gained explicit constitutional status. It requires citizens to be aware of the amount of taxes paid, including details on how this can be handled. **sub-constitutional legislation**(Law 12.741/2012)17The Brazilian Supreme Court, in its decisions regarding consumption taxation, reinforces that a lack of clarity in taxes violates this principle.

2.2.7. Principles Introduced by Constitutional Amendment 132/2023 (Article 145, §3, of the Federal Constitution)

The Tax Reform added five new principles of mandatory observance in consumption taxation:

- **Simplicity**: directs standardization towards reducing tax complexity and compliance costs;
- **Transparency**: requires clear identification of the tax burden on goods and services;
- **Tax Justice** It promotes taxation proportional to wealth and consumption.
- **Sustainable Development**: requires that taxation encourage sustainable economic practices;
- **Federal cooperation** The goal is to harmonize actions between entities, especially in the management of the new dual VAT system.18.

From 2023 onwards, the Brazilian legal system underwent a paradigmatic transformation: it not only consolidated the classic principles of tax law, but also introduced new vectors of interpretation aligned with sustainability, federal cooperation, and efficiency. The Supreme Federal Court has been fundamental in interpreting these norms, ensuring that the transition to the new model occurs in a manner compatible with the...

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[15] *STF. RE 1287019/SP, same note 1.*

[16] *Supreme Federal Court (STF). Direct Action of Unconstitutionality (ADI) 6365/AM. Rapporteur: Justice Cármen Lúcia. Decided on May 3, 2023.*

[17] *BRAZIL. Law No. 12,741, of December 8, 2012.*

[18] *BRAZIL. Constitutional Amendment No. 132/2023. Official Gazette of the Union, December 21, 2023.*

Fundamental constitutional values. The current scenario points towards a more rational, informational, and just model.

Next, we present:

1. **A comparative time line** with the relevant normative and jurisprudential frameworks;
2. **Synoptic charts** comparing the **Constitutional tax principles before and after Constitutional Amendment No. 132/2023**, based on doctrine and jurisprudence of the STF.

COMPARATIVE TIMELINE: TAX PRINCIPLES IN BRAZIL

Year	***Historical Landmark / Regulatory***	***Impact on Constitutional Tax Principles***
1988	*Promulgation of Federal Constitution*	*Institution of the principles tax classics: legality, prior, equality, ability to pay, no confiscation, and prohibition of confiscatory effect.*
2003	*Beginning of the "Permanent Tax Reform" in the National Congress*	*Failed attempts to simplify the system; no significant progress on the principles.*
2012	*Law No. 12.741/2012 (Fiscal Transparency Law)*	*Legislative anticipation of the principle of transparency, prior to its formal constitutional provision.*
2017 2020	*Expansion of the Supreme Federal Court's jurisprudence on topics such as immunities and contributory capacity.*	*Issues of general repercussion reinforce equality and selectivity based on fiscal justice.*
2022	*LC No. 190/2022 (ICMS DIFAL)*	*The Brazilian Supreme Court reaffirms legality and prior notice as limits to the power to tax.*
2023	*Judgment on ADI 7374 and Topic 1184 (Income Tax on serious illnesses)*	*Strengthening substantive equality and protecting the ability to pay taxes.*
2023 (ten.)	***Promulgation of Constitutional Amendment No. 132/2023****(Reform (Taxation)*	*Inclusion of five* ***new constitutional tax principles*** *in article 145, §3.*
2024	*First decisions by the Supreme Federal Court (STF) on environmental issues and the new VAT model.*	*The Brazilian Supreme Court (STF) is beginning to apply the new principles, especially those of sustainability and cooperation.*

Table 1 – Comparison between Tax Principles
Source: Table developed for this work

TABLE 2 - COMPARATIVE SYNOPSIS OF CONSTITUTIONAL TAX PRINCIPLES

A. Structural Comparison of the Principles Before and After Constitutional Amendment 132/2023

Principles (before EC) 132/2023)	*Status*	*New Principles (EC 132/2023)*	*Nature Current Legal*
Legality	*Constitutional (Art. 150, I)*	—	*Maintained*
Previous ***(annual and ninety-six (nonagesimal)***	*Constitutional (Art. 150, III)*	—	*Maintained*
Equality Tax	*Constitutional (Art. 150, II)*	—	*Maintained*
Capacity Contributory	*Constitutional (Art. 145, §1º)*	—	*Maintained*
Prohibition to Confiscation	*Constitutional (Art. 150, IV)*	—	*Maintained*
Transparency	*Sub-constitutional (Law 12.741/2012)*	***Constitutionalized*** *(Art. 145, §3º)*	***Raised to principle express***
—	—	***Simplicity***	***New beginning constitutional***
—	—	***Tax Justice***	***New beginning constitutional***
—	—	***Cooperation Federal***	***New beginning constitutional***
—	—	***Environmental Defense Environment***	***New beginning constitutional***

Table 2 - Structural Comparison of Principles Before and After Constitutional Amendment 132/2023 Source: Table developed for this work

The comparative table highlights the significant transformation of the national tax system with Constitutional Amendment 132/2023, which initiated the Tax Reform. While classic principles such as legality, prior notice, equality, ability to pay, and prohibition of confiscation were maintained in their essence, the amendment promoted the constitutionalization of new vectors. Transparency, previously restricted to the infraconstitutional level, became an express principle. Furthermore, the principles of simplicity, tax justice, federal cooperation, and environmental protection were incorporated. This change broadens the.

This normative framework provides greater constitutional weight to taxation, now guided not only by limits on the power to tax, but also by values of efficiency, equity, and sustainability.

Table 3 - Comparison with Doctrine and Jurisprudence (STF)

Principle	*Base Constitutional*	*Evolution Case law*	*Doctrine Relevant*
Legality	*Art. 150, I*	*RE 1287019/SP: LC requirement for DIFAL*	*Ricardo Lobe Torres; Leandro Paulsen*
Capacity Contributory	*Art. 145, §1º*	*Topic 1184: Insufficiency and serious illnesses*	*Paulo de Barros Oak; Roque Carrazza*
Equality	*Art. 150, II*	*ADI 7374: ICMS and regional products*	*Misabel Derzi; Kiyoshi Harada*
Previous	*Art. 150, III*	*Topic 1253: Supreme Court reinforces protection against retroactive charges*	*Hugo de Brito Ax*
No Confiscation	*Art. 150, IV*	*ADI 6365: prohibition of contributions with the purpose of disguised fundraising*	*Luciano Amaro*
Transparency	*Art. 145, §3º (EC 132/2023)*	*Law Enforcement 12.741/12; guidance from the Federal Revenue Service for invoices*	*Heleno Taveira Towers*
Simplicity	*Art. 145, §3º*	*Associated with the new IBS/CBS model with unified digital system*	*Eurico Marcos Diniz de Santi*
Justice Tax	*Art. 145, §3º*	*Interpreted as progressive and equitable taxation*	*Regina Helena Costa; André Mendes Moreira*
Environmental Defense Environment	*Art. 145, §3º*	*The Brazilian Supreme Court (STF) is already applying the concept in cases related to Green ICMS (a Brazilian tax incentive program) and environmental taxes.*	*Édis Milaré; José Eduardo Soares de Melo*
Cooperation Federal	*Art. 145, §3º*	*Related to Governance Committee IBS Manager*	*Helenilson Bridges*

Table 3 - Comparison with Doctrine and Jurisprudence (STF) Source: Table developed for this work

2.3 Analysis of the Evolution of Tax Legislation

Constitutional Amendment No. 132/2023 represents a watershed moment in the field of tax principles.**to elevate modern values to the constitutional text.**...such as sustainability, justice, and cooperation, already present in doctrine and jurisprudence. The Brazilian Supreme Court (STF) has been guided by a systematic and evolutionary interpretation of these principles, adapting them to the new demands of fiscal federalism and distributive justice.

Table 4 – Evolution of Constitutional Tax Principles in Brazil

Year	*Legal Framework or Case law*	*Effect on Tax Principles*
1988	*Federal Constitution of 1988*	*Consolidation of the principles classics: legality, prior, equality, ability to pay, not confiscation.*
2012	*Law No. 12.741/2012*	*It introduces tax transparency in consumer relations.*
2022	*LC No. 190/2022 (DIFAL/ICMS)*	*The Brazilian Supreme Court (STF) reaffirms legality and prior notice as limits to interstate taxation.*
2023	*STF Topic 1184*	*Strengthening equality and ability to pay (income tax exemption for serious illnesses).*
2023	*ADI 7374/DF*	*Prohibition of merely formal equality; principle of substantive equality reaffirmed.*
2023	*Constitutional Amendment No. 132*	*It introduces five new constitutional tax principles in article 145, §3.*
2024	*Initial applications of the new principles by the Supreme Federal Court.*	*Initial decisions involving simplicity, sustainability, and federal cooperation.*

Table 4 - Evolution of Constitutional Tax Principles in Brazil

Source Prepared by the author based on the Federal Constitution (1988), Constitutional Amendment No. 132/2023, decisions of the Supreme Federal Court (2022–2024) and related legislation.

Table 5 – Comparison between the Constitutional Tax Principles: Before and After Constitutional Amendment No. 132/2023

Principles Prior to the EC No. 132/2023	*Nature Legal*	*New Principles Introduced by EC No. 132/2023*	*Legal Nature Current*
Legality (Art. 150, I)	*Constitutional*	*Simplicity*	*Constitutional*
Previous (Art. 150, III)	*Constitutional*	*Transparency (Art. 145, §3º)*	*Constitutionalized*
Equality (Art. 150, II)	*Constitutional*	*Tax Justice*	*Constitutional*
Capacity Contributory (Art. 145, §1º)	*Constitutional*	*Development Sustainable*	*Constitutional*
No Confiscation (Art. 150, IV)	*Constitutional*	*Cooperation Federal*	*Constitutional*
Transparency (formerly: Law no.) 12.741/12)	*Sub-constitutional*	—	*Constitutionalized*

Table 5 - Comparison between Constitutional Tax Principles: Before and After Constitutional Amendment No.132/2023

Source: Own elaboration based on Constitutional Amendment No. 132/2023 and the doctrine of Torres (2023), Santi (2023) and Amaro (2024).

Table 6 – Supreme Federal Court Case Law Applied to Tax Principles (2022–2024)

Principle	*Case Judged (STF)*	*Thesis Established*	*Reference*
Legality	*RE 1287019/SP (Topic 1253)*	*DIFAL incidence requires supplementary law and prior notice.*	*STF, 2023*
Capacity Contributory	*Topic 1184 – IR for diseases serious*	*Revocation of exemption violates tax proportionality.*	*STF, 2023*
Equality	*ADI 7374/DF – ICMS differentiated*	*Regional discrimination unjustified violation equality*	*STF, 2023*
No Confiscation	*ADI 6365/AM – "environmental tax"*	*Non-contributions they may come to an end disguised fundraising*	*STF, 2023*
Transparency	*Law Enforcement 12.741/12*	*Mandatory Tax breakdown on invoice*	*STF, 2023*
Sustainability	*Green ICMS and environmental fees*	*Encouraging practices sustainable is compatible with the CF*	*STF, 2024 (precedents) several)*

Source Supreme Federal Court (2023–2024). Available at: https://www.stf.jus.br Accessed in: May 2025.

Table 6 highlights the actions of the Supreme Federal Court between 2022 and 2024 in strengthening constitutional tax principles, consolidating a jurisprudence that balances revenue collection efficiency with the protection of taxpayers' fundamental rights.

Regarding the principle of legality, Topic 1253 (RE 1287019/SP) stands out, reaffirming the requirement of a supplementary law and observance of prior notice for the collection of DIFAL (Differential Tax), preventing States from imposing the system without due normative support. In terms of contributory capacity, Topic 1184 prohibited the revocation of Income Tax exemptions for individuals with serious illnesses, based on the grounds of violation of proportionality and the protection of human dignity.

Equality was protected in ADI 7374, in which the Supreme Federal Court (STF) declared unconstitutional the granting of differentiated ICMS (Tax on Circulation of Goods and Services) that promoted unjustified regional discrimination. Regarding the principle of non-confiscation, ADI 6365 prohibited the creation of contributions with a disguised revenue-raising purpose under the label of "environmental tax." The duty of transparency was reinforced by the application of Law 12.741/12, which requires the detailed breakdown of the tax on invoices, guaranteeing the consumer's right to know the amount actually collected. Finally, in the field of sustainability, various precedents from 2024 established the compatibility of instruments such as the Green ICMS and environmental taxes with the Constitution.

In summary, the period analyzed reveals a Supreme Federal Court (STF) committed to constitutional supremacy, using tax principles as material limits to state action and instruments for realizing values such as fiscal justice, transparency, and sustainability.

2.4 Anti-avoidance clauses in tax planning

Anti-avoidance clauses (or general anti-avoidance rules — GAAR) are normative devices that authorize the tax authority to disregard acts or legal transactions carried out by taxpayers when these, although formally lawful, have as their predominant purpose to reduce, eliminate or defer the payment of taxes in an artificial or abusive manner.

The anti-avoidance clause does not combat tax evasion (already classified as an offense), but operates in the gray area where the taxpayer uses complex legal structures, formally legal, but devoid of substantial business purpose, with the sole objective of obtaining undue tax advantage.

TABLE 7 - Fundamental Distinction: Avoidance × Evasion

Tax avoidance (legal tax planning)	*Tax evasion (tax fraud)*
Use of lawful means to reduce the tax burden.	*Use of illicit means (fraud, simulation, falsehood)*
Respect the form and substance of the operations.	*It expressly violates the law.*

Tax avoidance (legal tax planning)	*Tax evasion (tax fraud)*
It is a taxpayer's right.	*It constitutes a criminal and administrative offense.*

SOURCE *Table prepared for this thesis.*

The anti-avoidance clause does not combat tax evasion (already classified as an offense), but operates in the gray area where the taxpayer uses complex legal structures, formally legal, but devoid of substantial business purpose, with the sole objective of obtaining undue tax advantage.

Fundamentals in Brazilian Law

In Brazil, the general anti-avoidance clause was introduced by Complementary Law No. 104/2001, which added a sole paragraph to Article 116 of the National Tax Code (CTN):

> *Article 116. Unless otherwise provided by law, the taxable event shall be deemed to have occurred and its effects to exist:*
> *[...]*
> *Sole paragraph. The administrative authority may disregard acts or legal transactions carried out with the purpose of concealing the occurrence of the taxable event or the nature of the constituent elements of the tax obligation, observing the procedures to be established by ordinary law.*

The device authorizes the tax authorities **to disregard** legal acts or transactions when used for **to conceal**:

- the occurrence of the taxable event; or
- the nature of the constituent elements of the tax obligation.

Application Criteria

Case law and legal doctrine have consolidated criteria for the application of anti- avoidance clauses:

1. Business purpose – the transaction must have a relevant economic or legal justification beyond mere tax savings.
2. Substance over form – economic reality prevails over formal appearance.
3. Abuse of rights – the taxpayer cannot exercise their right to tax planning in a way that distorts the purpose of the tax rule.
4. Contradictory procedure – the disregard must be preceded by an administrative process with full right to defense.

2.5 BUSINESS PURPOSE AND CORPORATE REORGANIZATION

The business purpose constitutes one of the most important criteria for distinguishing between legitimate tax planning and abusive tax avoidance. It refers to the substantial economic, legal, or business justification that legitimizes the practice of a legal act or transaction, beyond the mere obtaining of a tax advantage. In other words, an operation must have a reason for existing independent of the tax effects that result from it.

Torres (2010) identifies three theoretical currents on tax planning: the first, of a positivist-normativist matrix (represented in Brazil by Sampaio Dória), defends unlimited freedom of planning based on the autonomy of the will. The second, of a positivist-sociological matrix (moderately represented by Amilcar de Araújo Falcão), adopts the economic consideration of the taxable event and tends to consider any form of tax avoidance illicit. The third, which the author embraces, is that of the jurisprudence of values and post-positivism, which accepts tax planning as a legitimate form of tax savings, provided there is no abuse of rights.

The concept of business purpose is not expressly provided for in Brazilian legislation, but it has been developed by legal scholars and consolidated by the administrative jurisprudence of the Administrative Council of Tax Appeals and by the higher courts, especially the Superior Court of Justice and the Supreme
Federal Court. Its legal basis rests on constitutional principles such as the ability to pay, equality, and the prohibition of abuse of rights.

For a business purpose to be considered valid, it must meet three essential requirements. The first is substantiality, meaning that the justification presented must be relevant and not merely accessory or symbolic in the context of the operation. The second is autonomy, that is, the operation justifies itself, even in the absence of any tax benefit. The third is business rationality, stemming from legitimate strategic business decisions, such as market expansion, integration of operations, reduction of administrative costs, risk segregation, corporate governance, or succession planning.

Conversely, a business purpose is considered absent when the transaction cannot be sustained without the tax benefit, produces only formal effects without substantial alteration in the company's economic reality, or violates the purpose of the tax rule that is intended to be applied.

Corporate Reorganization: Types and Characteristics

Corporate reorganization encompasses all operations through which the legal, asset, or corporate structure of one or more legal entities is altered. These operations are governed by the Corporations Law and the Civil Code, and are also specifically regulated by tax legislation.

A merger occurs when one or more companies are absorbed by another, which succeeds them in all rights and obligations. In this operation, the acquiring company remains in existence, while the acquired companies are dissolved.

A merger consists of the union of two or more companies to form a new legal entity, extinguishing all the original companies, which give rise to a completely new entity.

A spin-off is the operation by which a company transfers a portion of its assets to one or more other companies. It can be total, when the spun-off company is dissolved, or partial, when it remains in operation with the remaining assets.

Transformation, in turn, is the alteration of the type of company without the extinction of the legal entity, such as when a limited liability company becomes a public limited company.

From a tax perspective, these operations traditionally enjoy tax neutrality, meaning that there is no immediate recognition of capital gains upon transfer of assets, and the successor assumes the tax rights and obligations of the predecessor, including the utilization of tax losses within the limits established by law.

The Intersection Between Business Purpose and Corporate Reorganization

The great complexity in contemporary tax law lies precisely in the intersection between corporate reorganizations and their tax effects. It is legitimate for taxpayers to seek the most efficient legal structure from a tax perspective, but this search cannot become a device to artificially reduce the tax burden.

Legitimate tax planning through corporate reorganization is characterized by the presence of a substantial business purpose that justifies the operation independently of the tax benefit. In these cases, the tax
advantage is a natural consequence of the chosen structure, not its determining cause. A classic example is the creation of a family holding company to organize succession planning, protect the personal assets of the partners, and allow for professional corporate governance. Although this structure may generate tax benefits in terms of inheritance tax and income tax, the business purpose linked to succession and asset management is substantial and autonomous.

On the other hand, abusive tax avoidance is defined as a corporate reorganization that cannot be sustained without the tax benefit, produces only formal effects without substantial alteration in economic reality, or distorts the purpose of tax regulations. The paradigmatic example is the artificial fragmentation of a company into multiple micro- enterprises, all operating in an integrated manner with single management and cash flow, solely for the purpose of qualifying for the Simples Nacional (Brazilian simplified tax regime). In this case, there is no business purpose that justifies the multiplication of legal entities,
and the tax benefit becomes the sole reason for the operation.

Evaluation Criteria by the Tax Authority

The assessment of the presence of business purpose in corporate reorganizations is based on objective criteria that consider the body of evidence and the specific circumstances of each case.

The substance-over-form criterion dictates that the tax authority must analyze whether the legal structure adopted effectively corresponds to the underlying economic reality, or whether there is a disconnect between the chosen form and the substance of the transaction.

The going concern criterion examines whether the business activity remained substantially the same after the reorganization, or whether there was an effective restructuring with a significant change in the way of operating.

The criterion of prior or reactive structuring considers whether the reorganization was planned in advance, documented in minutes and internal studies, or whether it occurred hastily after the start of tax proceedings.

The criterion of extra-fiscal effects analyzes whether the operation produced concrete effects beyond tax savings, such as improved operational efficiency, reduced administrative costs, effective risk segregation, or facilitation of investments.

The documentation criteria require minutes of meetings, valuation reports, feasibility studies, and other documents that demonstrate that the decision to reorganize resulted from a well-founded strategic analysis.

Consequences of a Lack of Business Purpose

When the tax authority concludes that there is no substantial business purpose in a corporate reorganization, it may apply the general anti-avoidance clause provided for in the sole paragraph of article 116 of the National Tax Code, disregarding the acts or legal transactions carried out with the purpose of concealing the occurrence of the taxable event or the nature of the constituent elements of the tax obligation.

Disregarding the legal personality of a transaction implies that the tax authorities tax the transaction according to its true economic substance, ignoring the formal structure created. The consequences include demanding the taxes that would be due on the actual transaction, plus late payment interest and, in some cases, qualified penalties when clear intent to defraud is established.

It is important to emphasize, however, that the application of the anti-avoidance clause must observe a contradictory procedure with a guarantee of full defense, as established in complementary law. The taxpayer has the right to prior expression of opinion and to present an objection before the definitive establishment of the tax
credit.

Impacts of the Tax Reform (EC 132/2023)

Constitutional Amendment 132/2023, by establishing the Tax on Goods and Services and the Contribution on Goods and Services within the scope of the Tax Reform, introduced new elements that impact the relationship between business purpose and corporate reorganizations.

The constitutional principle of simplicity seeks to reduce the complexity of the tax system and, consequently, decrease opportunities for abusive planning based on artificial structures.

The principle of federative cooperation establishes mechanisms for sharing information between federated entities, making it difficult to use interstate structures for exclusively fiscal purposes.

The full non-cumulative nature of the IBS and CBS, combined with the standardization of rates by operation category, significantly reduces incentives for corporate fragmentation and other artificial structures aimed at taking advantage of rate differences or special regimes.

However, the need to analyze the business purpose remains relevant, especially in operations involving specific regimes for small businesses, real estate and inheritance transactions, as well as situations where there is deferral or suspension of taxation conditioned on the continuity of activities.

CHAPTER 3 – THE LEGAL EFFECTS OF TAX PLANNING ON THE LIFE OF THE COMPANY

3.1 Legal Certainty and Risks of Tax Planning:

It is a legitimate right of the taxpayer to organize their business and activities in a way that minimizes the tax burden, using the available legal options. This is a fundamental strategic technique for business competitiveness, based on freedom of initiative and private autonomy.19However, given the complexity of the Brazilian tax system and the increasing sophistication of its enforcement mechanisms, the pursuit of fiscal efficiency must be balanced with the need for legal certainty.

To examine the validity requirements of tax planning from formal, substantive, and finalistic perspectives, as well as to analyze the main tax controversies and the risks of audits that permeate the relationship between the tax authorities and the taxpayer.

Requirements for Validity: Form, Substance, and Purpose

The validity of tax planning is not limited to merely observing the letter of the law. Jurisprudential and doctrinal evolution has established three fundamental dimensions for its legitimacy: form, substance, and purpose.

The Form and Principle of Legality

The starting point for any planning is the strict observance of legality, as stipulated in Article 150, I, of the Federal Constitution. Initially, a purely formal analysis prevailed in Brazil, in which rigorous compliance with legal formalities was sufficient to legitimize tax plans. However, this paradigm has changed.

Substance and the Theory of Substance Prevalence over Form Currently, administrative (CARF) and judicial doctrine and jurisprudence have adopted the theory of substance over form((prevalence of substance over form). Originating from North American law, especially from leading case Gregory v. Helvering((1935), this theory allows tax authorities to disregard the legal form adopted to ascertain the economic reality of the transaction.20.

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[19] *Business purpose: Validity of tax planning within the scope of the CARF (Administrative Council of Tax Appeals). Migalhas, 2024.*

[20] *Analysis of the Application of Theory of Substance over Form Regarding Tax Planning in Brazil. Bueno Tax, 2021.*

In Brazil, this substantive analysis is applied to verify whether a legal transaction has effective economic content or is merely an instrument for the artificial creation of tax benefits. Brazilian law does not allow for the disregard of acts valid solely for tax purposes unless there is simulation or artificiality.21.

Purpose and the Theory of Business Purpose

The most complex and subjective requirement concerns the purpose of the planning. This involves applying the Business Purpose Theory, which seeks to identify the real motivation behind the operation.

According to the doctrine and rulings of the CARF (Administrative Council of Tax Appeals), a transaction can be disregarded for tax purposes if it is found that its sole objective is to reduce the tax burden, devoid of any relevant (extra-fiscal) business purpose. However, the STF (Supreme Federal Court), when judging ADI 2.446, established an important benchmark: there is no rule that allows the tax authority to disregard valid legal acts or transactions without simulation, even if their motivation is exclusively the pursuit of a lower tax burden.

Justice Cármen Lúcia, the rapporteur, highlighted that the rule in the sole paragraph of Article

116 of the Brazilian Tax Code (CTN) is aimed at combating tax evasion (concealment of the taxable event), and not tax avoidance (choosing the least burdensome method). Therefore, the lack of a business purpose, by itself, is not sufficient for an assessment in the absence of intent, fraud, or simulation, with the burden of proof falling on the tax authorities to demonstrate these abusive practices.22

Tax Disputes and Assessments

The gray area between legitimate tax avoidance and abusive tax evasion is the main field of controversy, resulting in administrative and judicial audits and disputes.

The Insecurity Generated by the Anti-Avoidance Rule (Article 116, CTN)

The sole paragraph of Article 116 of the National Tax Code (CTN), introduced by Complementary Law 104/2001, authorizes the administrative authority to disregard acts or legal transactions carried out with the purpose of concealing the occurrence of the taxable event. The major controversy lies in its lack of regulation by ordinary law (a requirement foreseen in the provision itself), which generates insecurity and subjectivity. As the doctrine points out, the absence of

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21 *ADI No. 2,446 brought legal certainty to the 3rd Section of the CARF. Conjur, 2025.*

22 *MELLO, Letícia. Tax planning and its controversies in the Brazilian legal system. Migalhas, 2024*

Objective parameters make it difficult to distinguish between punishable concealment and simple lawful tax avoidance.

Risks and the Role of CARF

Given the legislative delay, the Administrative Council of Tax Appeals (CARF) has acted as the main forum for defining the limits of tax planning. The risk for the taxpayer is high: tax assessments, which can be supported by electronic data cross-referencing and artificial intelligence, frequently impose fines that can reach 150% of the tax due, in addition to criminal sanctions in more serious cases.23.

The jurisprudence of the CARF (Administrative Council of Tax Appeals), although it has evolved towards a substantial analysis, still presents inconsistencies. In 2025, for example, one of the most controversial topics was the amortization of goodwill in transactions with special purpose vehicles. While some rulings canceled the tax assessment, understanding that the use of a holding company does not constitute an offense in itself, others upheld the assessment, considering the structure artificial and devoid of business purpose.24.

The Need for Compliance and Risk Management

To mitigate the risks of being penalized, legal scholars have highlighted the importance of a robust tax compliance program. Given the legal uncertainty generated by the "modulation of effects" of Supreme Court decisions and the "practicality" that often relegates specific cases to a secondary position, companies must adopt a proactive stance.

This includes constant monitoring of precedents, careful risk analysis (not only of formal legality, but also of applicable case law), robust documentation of the business purpose, and support from qualified professionals. Transparency and fiscal governance are essential elements to demonstrate the good faith and legitimacy of the strategies adopted, reducing exposure to audits and penalties.

3.2 Responsibility of Administrators

The liability of administrators in tax matters is one of the most sensitive and controversial issues in Brazilian law. It involves a tension between the State's interest in revenue collection and the protection of the assets of managers.

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23 NATAL, Eduardo Gonzaga Oliveira. Corporate tax planning: Legal certainty and risk management in tax savings. Migalhas, 2025.

24 Main issues judged by CARF in 2025 and perspectives for 2026 – part 1. Machado Meyer, 2025

Business administration demands a delicate balance, anchored in constitutional guarantees such as due process, the right to a fair hearing, and the right to a full defense. The legal system establishes, as a rule, the patrimonial autonomy of the legal entity, granting partners and administrators a "shield" that encourages economic activity and risk-taking. However, exceptionally, this protection can be disregarded when abusive or fraudulent conduct is verified.

By analyzing two important aspects of this accountability: (1) the theory of piercing the corporate veil, with its constitutional foundations and limits; and (2) the joint and several liability and tax-criminal liability of administrators, in light of the legislation and jurisprudence of the Administrative Council of Tax Appeals (CARF) and the Superior Court of Justice (STJ).

3.2.1. The Theory of Disregarding Corporate Personality: Foundations and Legal Nature

The theory of disregarding the legal personality (disregard doctrine This breaks with the fundamental principle of corporate law according to which the rights and obligations of the company are not confused with those of its partners and administrators. As jurisprudence aptly summarizes, "the personal assets of the partners, once the capital of the limited liability company has been fully paid up, are not liable for the company's debts, whether common or tax-related, unless the partner has acted in excess of their powers or in violation of the law, the articles of association, or the bylaws."

This is an exceptional mechanism that, by removing the "protective shield" of legal personality, allows the effects of certain obligations to be extended to the personal assets of administrators or partners, without, however, extinguishing the legal entity, which remains the principal debtor.

Requirements: Article 50 of the Civil Code and the Major and Minor Theories Article 50 of the Civil Code establishes the objective requirements for disregarding legal personality, demanding proof of abuse of legal personality, characterized by misuse of purpose or commingling of assets.

Legal doctrine classifies the Civil Code's provisions as belonging to the so-called "Major Theory" of piercing the corporate veil. This theory requires the effective demonstration of misuse of purpose or commingling of assets, with the judge responsible for a case-by-case and restrictive analysis, without presumptions. The "Minor Theory," in turn, adopted in some microsystems such as the Consumer Protection Code and the Law of...

Environmental Crimes allows for disregard based on broader criteria, such as mere insolvency or inactivity of the company.

The Superior Court of Justice has applied the Major Theory in tax matters, requiring conclusive proof of the legal hypotheses. In the fiscal context, STJ Precedent 435 establishes an important exception: "the irregular dissolution of a company is presumed when it ceases to operate at its tax domicile without notifying the competent authorities," in which case the redirection of tax enforcement to the partners is permitted.

Constitutional Limitations on Disregarding Legal Personality in Tax Law

The application of the disregard doctrine in tax matters must strictly observe the constitutional principles that comprise the national tax system. Constitutional doctrine, represented by authors such as Roque Antonio Carrazza, maintains that tax law cannot disregard the principles of legality, legal certainty, and due process.

In this sense, disregarding the legal personality for tax purposes requires a prior administrative procedure in which the administrator is guaranteed the right to due process and a full defense, otherwise fundamental guarantees are violated. The administrator's assets cannot be compromised without unequivocal proof of the occurrence of the legal grounds for liability.

3.2.2 Joint and Several Liability and Tax-Related Liability Legal Basis: Articles 124, 134 and 135 of the Brazilian Tax Code (CTN)

The National Tax Code establishes in its articles 124, 134, and 135 the instances of tax liability for third parties, including administrators. Specifically, article 135, item III, is the central provision for holding managers liable:

> "Article 135. The following are personally liable for tax obligations arising from acts committed in excess of powers or in violation of law, articles of association, or bylaws: [...] III - directors, managers, or representatives of private legal entities."

The interpretation of this provision, however, cannot be extensive. The Superior Court of Justice (STJ) has established the understanding that the mere status of administrator is not sufficient for liability; it is necessary to demonstrate that...

The manager acted with an excess of powers, in violation of the law, or in breach of the articles of incorporation.

Requirements for Joint Liability

The case law of the CARF (Administrative Council of Tax Appeals) has precisely defined the requirements for joint liability based on article 135, III, of the CTN (National Tax Code):

(a) Proof of the unlawful act: The tax authority has the burden of
To demonstrate that the administrator acted contrary to the law, the articles of association, or the bylaws, or that they exceeded the limits of their functions. Liability based solely on the position held is not admissible.25.

(b) Need for intent or gross negligence: In several rulings, the CARF
It has required proof of intent or, at least, gross negligence on the part of the administrator. The mere non-payment by the company, in itself, does not authorize the redirection of liability.

(c) Participation in the generating event: For the joint liability provided for
In article 124, item I, it is necessary that the parties have jointly participated in the occurrence of the taxable event. Mere economic interest in the business is not enough to establish liability.

Tax-Related Criminal Liability

In the criminal sphere, holding an administrator liable for crimes against the tax order requires even more rigorous criteria. The Superior Court of Justice (STJ) has repeatedly ruled that the mere status of manager does not imply a presumption of participation in the crime. In a landmark ruling, the STJ rejected the application of the Theory of Control of the Act to attribute criminal responsibility to
an administrator, on the grounds that there was no concrete evidence of her causal link to the criminal conduct. The mere hiring of an accounting firm to manage tax matters does not, in itself, constitute evidence of participation in the crime.

In administrative terms, the configuration of fraud, simulation, or collusion also gives rise to the application of a qualified fine of 150% on the tax due, in addition to the personal liability of the administrators. The CARF (Administrative Council of Tax Appeals) understands that, in these cases, the responsibility of the managers stems from the management power they hold over the fraudulent acts.

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25 KLA Lawyers. Successful cases in the Brazilian Tax Court: a report on taxpayer victories in 2020. May 13, 2020.

3.3. Procedure for Establishing Liability

Brazilian Federal Revenue Service Normative Instruction No. 1,862/2018 established specific procedures for formalizing joint liability, allowing the tax authority to include third parties as liable even after the conclusion of the administrative procedure. Although this possibility is criticized by legal scholars for violating Article 142 of the National Tax Code (CTN), which requires the identification of the liable party in the assessment, the rule seeks to ensure greater transparency, determining that the tax assessment notice must contain the identification of the liable third party, a description of the facts, and the legal basis for the liability.

The CARF's Perspective and the Limits of Accountability

The case law of the CARF (Administrative Council of Tax Appeals) has evolved towards the adoption of restrictive criteria regarding the liability of administrators. In recent rulings, the Council has dismissed tax assessments when:

(i) Lack of evidence of the unlawful act: The CARF has been cancelling requirements.

Tax authorities may issue rulings when the audit fails to demonstrate, with concrete evidence, that the administrator acted with abuse of power or in violation of the law.

(ii) Absence of intent: In repeated decisions, the Council has understood that the liability under Article 135, III, requires proof of fraudulent intent or, at a minimum, gross negligence on the part of the manager.

(iii) Improper analogical application: The Administration cannot extend, by By analogy, the grounds for liability established by law.

In Brazilian tax law, the liability of administrators, while legitimate and necessary to curb fraudulent practices, cannot be applied broadly or without procedural safeguards. The Theory of Disregarding Corporate Personality, governed by Article 50 of the Civil Code under the aegis of the Major Theory, requires conclusive proof of misuse of corporate purpose or commingling of assets.

Similarly, the joint and several tax liability provided for in Article 135, III, of the Brazilian Tax Code (CTN) requires concrete proof that the administrator acted with abuse of power, violation of the law, or breach of the articles of incorporation, with the burden of proof falling on the tax authority.

The jurisprudence of the CARF (Administrative Council of Tax Appeals) and the STJ (Superior Court of Justice) has been moving towards protecting administrators acting in good faith, rejecting automatic liability and requiring compliance with the constitutional principles of due process, adversarial proceedings, and the right to a full defense. Legal certainty demands that assets be protected.

CHAPTER 4 – JURISPRUDENTIAL ANALYSIS AND CASE STUDY OF CARF ABOUT TAX PLANNING.

This thesis presents a jurisprudential analysis of the Administrative Council of Tax Appeals (CARF), a parity body linked to the Ministry of Finance, which constitutes the highest instance of administrative judgment in tax matters in Brazil. In September 2025, the Council completed a century of existence, consolidating itself as one of the most important forums for resolving tax disputes, responsible for the administrative review of tax assessments in a procedure that precedes and frequently replaces judicial litigation.

The relevance of CARF (Administrative Council of Tax Appeals) to the topic of tax planning is unquestionable. In 2025, the body presented significant data on its performance: the backlog of pending cases stabilized at approximately 72,000, the lowest level since 2017, a 40% reduction compared to the 120,000 cases awaiting judgment in 2018. The total amount under discussion reached R$1.085 trillion, and the average processing time in the Superior Chamber of Tax Appeals (CSRF) was reduced to 295 days, a 62% decrease compared to the 780 days recorded in 2019.

This paper analyzes the jurisprudential evolution of the CARF (Administrative Council of Tax Appeals) in matters of tax planning, with emphasis on the application of the Business Purpose Doctrine and the main precedents on goodwill in corporate transactions, business division, and simulation, based on paradigmatic rulings issued in recent years.

Evolution of Administrative Case Law on Tax Planning

From Formal Analysis to Substantive Analysis

Brazilian administrative case law on tax planning has evolved in distinct phases. Initially, a purely formal analysis prevailed, in which strict compliance with legal formalities was sufficient for...

To legitimize tax plans. Regardless of the economic objective or underlying motivation of the operations, the acts were considered legal as long as they followed strict legality, regardless of the intended tax objective.

Subsequently, there was a shift to a phase of substantive analysis, in which judges began to consider not only the formal conformity of the transactions, but also their economic substance and business purpose. This transformation was influenced by the adoption of doctrinal and jurisprudential concepts from other countries, mainly from the jurisprudence of the United States, especially the precedent...Gregory v. Helvering(1935), which established the need for a significant economic purpose for the validity of the transactions.

Constitutional Foundations of Tax Planning

The legitimacy of tax planning in Brazil is supported by several constitutional principles. Article 150, item I, of the Federal Constitution establishes the principle of tax legality, according to which the Union, States, Federal District, and
Municipalities are prohibited from levying or increasing taxes without a law establishing them. This principle ensures that taxpayers will only be obliged to pay taxes created or increased through a formally validated law.

Article 170 of the Federal Constitution enshrines the principle of freedom of initiative, which guarantees individuals and companies the right to organize their economic activities freely, provided that legal norms are observed. This principle is essential for tax planning, as it gives taxpayers the ability to
structure their operations to achieve greater economic efficiency and reduce tax costs.

Section 1 of Article 145 of the Federal Constitution establishes the principle of ability to pay, determining that taxes should be imposed according to the taxpayer's financial capacity. This principle allows taxes to be applied proportionally and fairly, legitimizing planning strategies that adjust the tax burden to the taxpayer's actual economic capacity.

4.1 The Business Purpose Theory at CARF

The Business Purpose Theory (business purpose The concept of corporate restructuring emerged in US jurisprudence as a tool to identify the true motivation behind corporate transactions. In Brazil, the Administrative Council of Tax Appeals (CARF) began applying it to assess the legitimacy of tax planning, especially in cases where artificial structures created solely to reduce the tax burden are suspected.

Ruling No. 1401-001.059, issued on October 9, 2013, consolidated important understandings on the matter. On that occasion, the CARF (Administrative Council of Tax Appeals) defined tax planning as follows:

"Tax planning consists of the practice of lawful conduct, permitted by law, adopted by the taxpayer, which has the effect of reducing or avoiding the payment of taxes that would be due if the planning had not taken place. In this sense, tax planning is, first and foremost, nothing more than planning. It is about thinking ahead, organizing, planning, keeping in mind that, to achieve a certain business outcome, there is an alternative or another lawful legal transaction that, if carried out, will lead to the reduction or avoidance of tax payment."

The ruling also established an important distinction between the existence of a business purpose and the validity of the transaction for tax avoidance purposes:

"The existence of a business purpose is not, in itself, sufficient to validate a transaction as tax avoidance, especially when the reality derived from the factual elements of the transaction diverges from the form used to register it."

The Case of "Reverse Incorporation"

Ruling No. 1401-001.059 analyzed the so-called "reverse merger," a structure in which a company with accumulated tax losses but no effective activity merges with another operational company. The CARF (Administrative Council of Tax Appeals) understood that there is no business reality when:

"A company with a record of tax losses, but without effective activity or operation, incorporates another operational company, even if it belongs to the same group."

The scenario involves a company where all of its operational assets were transferred through a spin-off followed by a merger, leaving the original company with only a record of losses. Therefore, the business rationale behind emptying a company of its operational assets, leaving it solely with its tax losses, remains unjustified and unproven. In reality, doing so created a fictitious, shell company whose sole purpose was to carry the accumulated tax losses.

Qualified Penalties in Tax Planning Cases

A crucial point in the CARF (Administrative Council of Tax Appeals) jurisprudence concerns the application of the 150% qualified penalty in cases where tax planning is disregarded. Ruling No. 1401-001.059 established an important guideline:

"Despite the taxpayer's clear intention to reduce their taxation, I do not see the presence of intent related to the conduct that led to the intended tax reduction. In cases of tax planning, it is necessary to identify intent related to the illegality of the conduct, and not to the objective of reducing taxes. This is because the very core of the concept of tax avoidance is the taxpayer's right to plan their business with the objective of reducing or not paying taxes."

The court understood that, given the failure of the tax planning and the absence of evidence that the taxpayer knew and intended to commit the illegal act, the qualified penalty should be dismissed. The decision recognized that, although the transaction was considered simulated for tax purposes, the taxpayer acted with the conviction that he was carrying out a lawful legal transaction, thus negating the alleged intent to defraud.

Case Studies: Goodwill in Corporate Transactions

In 2025, the panels of the 1st Section of CARF (Administrative Council of Tax Appeals) were responsible for more than 180 judgments that dealt directly or indirectly with the amortization of goodwill in the calculation bases of IRPJ (Corporate Income Tax) and CSLL (Social Contribution on Net Profit). The legal regime applied, in the vast majority of cases, was that of Law No. 9,532/97.

The controversies focus on two main fronts: amortization in transactions involving allegations of using a shell company as an intermediary, and the imposition of a qualified fine.

Interposition of a Vehicle-Company

The tax amortization of goodwill in structures involving the use of shell companies has been judged by the CARF (Administrative Council of Tax Appeals) based on the specific circumstances of each case. Sometimes the amortization is allowed, sometimes the requirement is maintained, depending on the arguments justifying compliance with the requirements of Articles 7 and 8 of Law 9.532/97.

The tax authorities question the legitimacy of amortizing goodwill when a shell company is involved, arguing that there has been no commingling of assets between the actual investor and the investee. The use of an intermediary shell company, solely for the purpose of allowing the amortization of goodwill, would not be sufficient to meet the deductibility requirements stipulated in Law 9.532/97.

Precedents Favorable to Taxpayers

The ruling 9101-007.435 constitutes an important precedent that concluded with the cancellation of the tax requirement and the legitimacy of using a shell company.
The panel established that:

> "The use of a holding company to facilitate an acquisition at a premium does

not, in itself, constitute a violation of the law or artificiality. To disregard the legal effects of a duly formalized transaction, it is essential that the tax authorities demonstrate that there was simulation or artificiality."

The ruling emphasized the absence of any specific legal prohibition or anti-avoidance rule forbidding the use of holding companies to acquire investments at a premium. The assessment should focus on whether or not there was a simulation, in accordance with Article
167 of the Civil Code.

The majority of the panel also rejected the "real acquirer" argument as an independent criterion for disallowance, pointing out that the legislation (articles 7 and 8 of Law 9.532/97) requires a commingling of assets between the holder of the stake and the investee, and not an identity with the entity that allegedly financed the resources.

Traceability of the origin of funds would be irrelevant for the recognition of the right to amortization, when the regulatory requirements are met.

In ruling 1402-007.448, the favorable decision expressly stated that Law 9.532/97 allows acquisition through a shell company, and there are no reasons to restrict this use. When necessary or useful to the business strategy, this structure does not constitute an infraction in itself.

Precedents Unfavorable to Taxpayers

Conversely, ruling 9101-007.478 established the premise that amortization presupposes that the actual investor participates in the corporate event that materializes the meeting between the premium and the investment (incorporation, merger or spin-off). The panel understood that the simple transfer of resources to the special purpose vehicle would not make it an "investor" for the purposes of articles 7 and 8 of Law 9.532/97.

Ruling 1202-002.124 decided that amortization is not deductible when it is found that the goodwill was borne by a foreign investor, internalized through a special purpose vehicle, and without the commingling of assets involving the legal entity that actually disbursed the funds. This artificial structure was considered for the purposes of the tax benefit.

Premium under the Transitional Tax Regime (RTT)

The 2nd Panel of the 3rd Chamber of the 1st Section of the CARF (Administrative Council of Tax Appeals) decided, by a vote of 5 to 1, that companies can amortize goodwill based on an expert report, even when the transaction occurred under the Transitional Tax Regime (RTT). The dispute involved Amil Assistência Médica in the acquisition of Medial Saúde SA, in which the tax authorities questioned the amount paid in excess, arguing that it did not reflect expectations of future profitability, but rather the purchase of identifiable intangible assets.

The majority of the panel considered that, under the RTT (Transitional Tax Regime), the effects of CPC 15 (Accounting Pronouncement 15) and Law 11.638/2007 should be neutralized for tax purposes. The panel concluded that the tax authorities could not rely solely on corporate financial statements without the adjustments provided for by the Transitional Accounting Tax Control (FCont). Furthermore, it understood that the presented report proved the expectation of future profitability.

4.2 Case Studies: Activity Breakdown and Simulation - The Case Saturn Scales (Judgment No. 2402-006.179)

Ruling No. 2402-006.179, decided on May 9, 2018, analyzed a paradigmatic case of the splitting of activities using intermediary companies to improperly benefit from the Simples Nacional tax regime. The CARF (Administrative Council of Tax Appeals) defined the criteria for characterizing this abusive practice as follows:

"The fragmentation of business activities, through the use of existing labor in intermediary companies, which lack operational, administrative, and financial autonomy, to artificially and improperly benefit from the advantages of the Simples Nacional tax regime, violates tax legislation, thus justifying, based on numerous and solid evidence, the disregard of that formally constituted service provision."

The court established that simulation can occur when circumstances and evidence indicate the coexistence of companies with favorable tax regimes, pursuing the same economic activity, with common partners or administrators and the use of the same employees, the same means of production and the same physical facilities, implying asset commingling and atypical business management.

The ruling reaffirmed the principles that should guide tax analysis:

"Regarding the social security relationship, the facts must prevail over the appearance that may be formally or documentarily presented, and the company being audited, as the effective party responsible for the work of the insured individuals who provided services to it through an intermediary company, is obligated to pay the contributions due."

4.3. Case Studies: Legitimate Corporate Reorganizations - Ruling No. 1201-007.271: Capital Reduction and Business Purpose

In a highly significant decision, the CARF (Administrative Council of Tax Appeals) issued ruling no. 1201-007.271, reaffirming the legitimacy of tax planning structured on a business purpose. The case involved a capital reduction operation with the return of shares at book value, followed by the subsequent sale of these shares by a Private Equity Investment Fund (FIP).

The structure consisted of: a company reduced its share capital, returning to its shareholders—among them, an investment fund (FIP)—shares of another company, based on the book value of the assets, as authorized by article 22 of Law No. 9,249/1995. After the operation, the FIP sold the shares received to a third company, realizing a capital gain subject to the tax exemption rules applicable to the investment fund regime.

The Brazilian Federal Revenue Service understood that the set of operations had been artificially structured to transfer the capital gain from the legal entity to the FIP (Investment Fund in Participations), seeking undue exemption from income tax and CSLL (Social Contribution on Net Profit). The CARF (Administrative Council of Tax Appeals), upon analyzing the case, concluded that there were no elements that characterized simulation, fraud, or malice, rejecting the tax authority's argument of abusive planning.

Capital reduction with the return of assets at book value is a legitimate mechanism for corporate reorganization, expressly provided for by law, and cannot be disregarded simply because it generates tax deferral. The panel highlighted that the pursuit of tax efficiency—when supported by regular formal acts and plausible economic justifications—constitutes a valid business purpose, and not illegal conduct.

The decision reinforces that only the unequivocal demonstration of simulation or fraud authorizes the disregard of valid legal transactions, rejecting generic interpretations about "lack of business purpose".

The evolution of CARF (Administrative Council of Tax Appeals) jurisprudence, while providing greater substance to the analysis of tax planning, has also introduced elements of subjectivity that generate legal uncertainty. The absence of a general anti-avoidance rule in the National Tax Code, which could provide precise guidelines on the validity of tax planning, exacerbates this situation.

The lack of specific regulations regarding the limits of tax planning in Brazil creates difficulties for both the tax administration and taxpayers. The absence of clear and objective standards makes it difficult to distinguish between legitimate and abusive tax avoidance practices.

Administrative and judicial courts, through the interpretation and application of constitutional and legal principles, play a fundamental role in defining these limits. However, case law still presents inconsistencies, which increases uncertainty for taxpayers.

To establish clearer and more objective parameters, reduce subjectivity, and promote an environment of greater predictability and legal certainty, legislative and jurisprudential progress is necessary. Specific regulation on the Business Purpose Theory and the implementation of a general anti-avoidance rule are identified as ways to achieve this goal.

The Importance of Documentation and Compliance

Given the current scenario, taxpayers should adopt a proactive stance in documenting their tax planning. Preparing technical opinions, consulting with the tax authorities beforehand, and maintaining robust documentation that proves the business purpose of the transactions are good practices that can reduce risks and increase legal certainty.

The need for integration between corporate accounting and tax planning is fundamental, especially in light of precedents such as the one that recognized the amortization of goodwill under the RTT (Transitional Tax Regime). The preparation of detailed reports on expected future profitability and the proper recording of transactions in the Transitional Accounting and Tax Control (FCont) are essential to guarantee the legitimacy of the deductions.

CHAPTER 5 – FINAL CONSIDERATIONS AND CONTRIBUTIONS OF THE RESEARCH

5.1 Critical Evaluation of the Findings

This thesis, by analyzing tax planning instruments and their legal effects on business life, revealed a panorama of complexity and contradictions that reflect the very nature of the Brazilian tax system. A critical evaluation of the findings demonstrates that tax planning, although recognized as a legitimate right of the taxpayer, is in a field of permanent tension between business autonomy and the State's supervisory power.

The dichotomy between tax avoidance and tax evasion remains the central point of contention. Research has shown that the theoretical distinction between lawful and unlawful practices, although well-defined by legal scholars, loses clarity in practical application. What legal scholars present as a clear boundary between the right to plan and the obligation to pay taxes becomes, in administrative and judicial reality, a gray area where subjective criteria such as "business purpose" and "substance over form" are applied with varying degrees of rigor.

Legal uncertainty emerged as the most worrying finding. The research demonstrated that the lack of specific regulation of the general anti-avoidance clause (article 116, sole paragraph, of the CTN), coupled with the unstable jurisprudence of the CARF and the superior courts, generates an environment of uncertainty that harms both taxpayers and the tax administration itself. Companies seeking to structure their businesses efficiently find themselves facing a paradox: the more sophisticated the planning, the greater the risk of being audited, even if formally supported by legislation.

The jurisprudential evolution of the CARF (Administrative Council of Tax Appeals) deserves critical analysis on two levels. On the one hand, a significant maturation is observed in the substantive analysis of tax planning, with the abandonment of a purely formalistic view that allowed structures devoid of any economic reality. The adoption of the business purpose doctrine has brought greater sophistication to tax analysis, making it possible to distinguish legitimate operations from mere artificial ones.

On the other hand, this evolution has introduced elements of subjectivity that compromise predictability. Analysis of paradigmatic rulings reveals that, faced with similar factual situations, the CARF (Administrative Council of Tax Appeals) has adopted divergent decisions, especially in cases involving

amortization of goodwill with the use of a shell company. The same body that, in some judgments...

While some recognize the legitimacy of the structure, others disregard it arguing a lack of business purpose, without clear objective criteria to guide the distinction.

The responsibility of administrators constitutes another critical point. Research has shown that, although legislation establishes strict requirements for the personal liability of managers (abuse of power, violation of the law, intent or gross negligence), tax audit practices frequently disregard these guidelines. The mere status of being an administrator, or even the simple default of the legal entity, has been used as grounds for redirecting tax enforcement, in clear violation of the principle of patrimonial autonomy and the guarantees of due process of law.

However, the most recent case law from the Superior Court of Justice (STJ) and the Administrative Council of Tax Appeals (CARF) points to a course correction, with the adoption of more restrictive criteria that require concrete proof of the illicit act and rule out automatic liability. This trend, although not yet consolidated, represents progress in protecting bona fide administrators and in the legal certainty of the business environment.

The tax reform (Constitutional Amendment No. 132/2023) has been identified as a watershed moment, although its concrete effects will take time to be fully assessed. The constitutionalization of the principles of simplicity, transparency, tax justice, federative cooperation, and sustainable development represents a new hermeneutical paradigm that should guide the interpretation of all tax regulations. The expectation is that these new principles will contribute to reducing complexity and, consequently, to decreasing opportunities for abusive tax planning based on artificial structures.

The case study on goodwill in corporate transactions revealed the persistence of fundamental controversies. The issue of using shell companies remains one of the most contentious topics, with contradictory decisions that sometimes recognize the legitimacy of the structure and sometimes disregard it based on restrictive interpretations. The research demonstrated that the lack of objective parameters on what constitutes artificiality allows the tax authorities, in many cases, to replace legal analysis with subjective value judgments about the "morality" of the transaction.

The analysis of the ruling on the splitting of business activities showed that, in cases where there is strong evidence of simulation, with the use of intermediary companies lacking operational, administrative, and financial autonomy, the tax authorities' actions are supported by legislation and

jurisprudence. The problem lies in extending this logic to situations where there is no concrete evidence.

No artificiality involved, only the legitimate exercise of the right to choose the most advantageous corporate structure.

The need for tax compliance and robust documentation has emerged as an inescapable practical conclusion. Given the current climate of legal uncertainty, the research demonstrates that companies that adopt a proactive stance, adequately documenting the business purpose of their operations, preparing technical reports, and maintaining detailed records of strategic decisions, significantly reduce the risk of penalties and increase their chances of success in potential litigation.

Finally, the research revealed that fiscal efficiency and legal certainty are not antagonistic objectives, but can and should be pursued together. The ideal tax system is not one that prevents any planning, but rather one that establishes clear rules that allow taxpayers to organize their businesses with predictability, without needing to resort to complex structures to obtain security, or to face prolonged litigation to enforce rights granted to them by law.

A critical assessment of the findings leads to the conclusion that tax planning, to be legitimate and sustainable, must meet three fundamental requirements: (i) strict adherence to legality, respecting the forms and procedures provided for by law; (ii) the presence of a substantial business purpose, demonstrable through robust documentation and well-founded business decisions; and (iii) transparency, with adequate accounting and tax records of operations, allowing the tax administration to exercise its supervisory power in a swift and efficient manner.

Building a more rational, efficient, and legally secure business environment ultimately depends on a balance between the taxpayer's right to plan and the state's duty to tax. This balance can only be achieved through the consolidation of objective criteria, the reduction of the complexity of the tax system, and the strengthening of constitutional guarantees that protect the taxpayer against arbitrariness and uncertainty.

5.2 Verification of Initial Hypotheses

We examined the four hypotheses formulated in the introduction of this thesis, comparing them with the research findings and the theoretical and jurisprudential foundation developed throughout the chapters.

H1 – The proper use of tax planning tools, based on current legislation and business purpose criteria, can legally reduce the tax burden on companies without constituting evasion or simulation.

Partially verified.

The research demonstrated that the hypothesis finds support in legal doctrine and a significant portion of case law, but its implementation depends on factors that transcend mere legal justification.

Arguments in favor of the hypothesis:

CARF ruling no. 1401-001.059 expressly recognized that "tax planning consists of the practice of lawful conduct, permitted by law, adopted by the taxpayer, and which has the effect of reducing or not paying the tax that, if there had been no planning, would be due." The decision in ruling no.

1201-007.271 reaffirmed that the pursuit of fiscal efficiency, when supported by regular formal acts and with plausible economic grounds, constitutes a valid business purpose, not constituting illicit conduct.

The doctrine of Ricardo Mariz de Oliveira and Marco Aurélio Greco, cited in the theoretical framework, argues that taxpayers have the right to organize their business in the least burdensome way, provided that legal limits are respected. Arguments that relativize this hypothesis:

The research showed, however, that the distinction between legitimate and

abusive planning is often subjective. The CARF (Administrative Council of Tax Appeals), when applying the business purpose doctrine, has adopted contradictory decisions in similar factual situations, especially in cases of goodwill amortization with the use of a shell company. Ruling 9101-007.435 recognized the legitimacy of the structure, while ruling 9101-007.478 adopted the opposite understanding, demonstrating that "adequate justification" is not sufficient to guarantee predictability.

The very concept of "business purpose" lacks an objective legal definition, being constructed on a case-by-case basis by jurisprudence, which introduces an element of uncertainty.

H2 – The lack of regulatory clarity and legal uncertainty regarding the boundaries between lawful tax avoidance and unlawful tax evasion compromise the effectiveness of tax planning, increasing the risk of tax assessments and legal disputes. **FULLY VERIFIED.**

This hypothesis was largely confirmed by the research findings, constituting one of the strongest conclusions of the study.

Confirmatory arguments:

The research identified that the general anti-avoidance clause (article 116, sole paragraph, of the Brazilian Tax Code) has never been regulated by ordinary law, as required by the provision itself. This legislative delay, highlighted in the doctrine of Hugo de Brito Machado and in the cited opinion articles, generates a normative vacuum that grants the tax administration broad discretion in disregarding legal acts.

Case law analysis revealed that the CARF (Administrative Council of Tax Appeals), acting as the main forum for defining the limits of tax planning, presents significant inconsistencies. Ruling No. 1401-001.059 dismissed the qualified penalty due to lack of intent, but maintained the tax requirement, highlighting the difficulty in establishing objective criteria.

Summary 435 of the Superior Court of Justice (STJ), which allows for the presumption of irregular dissolution based solely on fiscal inactivity, was cited as an example of how legal uncertainty extends to the liability of administrators, permitting the redirection of tax enforcement without effective proof of illicit conduct.

Data on administrative litigation also corroborate this hypothesis: the total amount under discussion at CARF reached R$ 1.085 trillion, and the average processing time at CSRF, although reduced to 295 days, still represents a significant period of uncertainty for companies.

H3 – Companies that adopt tax planning practices based on well-defined technical, legal, and accounting criteria demonstrate greater tax efficiency, better financial performance, and greater investment capacity. **VERIFIED, WITH RESERVATIONS.**

The hypothesis finds support in the literature and studies cited, but the research did not perform a quantitative empirical analysis that would allow for its definitive confirmation within the scope of this work.

Arguments in favor:

The research justification mentioned a study by the Dom Cabral Foundation

(2022) according to which “companies with strategic tax management

"They demonstrated solvency and liquidity levels up to 30% higher than those that did not adopt similar practices."

The doctrine of Silvio Crepaldi, cited in the rationale, presents tax planning as a strategic management tool, highlighting its contribution to improving cash flow, reducing tax liabilities, and increasing competitiveness.

The paradigmatic case analyzed in ruling no. 1201-007.271 demonstrates that the proper structuring of the capital reduction operation with the return of shares at book value allowed the company to achieve tax efficiency within legal limits, preserving its reinvestment capacity.

Necessary caveats:

Due to its qualitative and documentary nature, the research did not include econometric analyses or case studies with concrete financial data that would allow for measuring the impact of tax planning on business performance. Furthermore, the case studies analyzed refer to situations where the planning was challenged by the tax authorities, not encompassing companies that adopted successful strategies without litigation.

H4 – The existence of unstable case law and restrictive tax interpretations negatively impacts the predictability and legal certainty of tax planning instruments in Brazil.

FULLY VERIFIED.

This hypothesis was confirmed by the research findings, especially in the analysis of the case law of the CARF (Administrative Council for Tax Appeals) and the higher courts.

Confirmatory arguments:

The research demonstrated that, in 2025, the panels of the 1st Section of CARF (Administrative Council of Tax Appeals) were responsible for more than 180 judgments on amortization of goodwill, with divergent decisions on the legitimacy of the use of a shell company. Ruling 9101-007.435 cancelled the tax assessment, while ruling 9101-007.478 upheld the assessment, highlighting the jurisprudential instability.

The divergence between the major and minor theories of piercing the corporate veil has been identified as a source of uncertainty, especially because the Civil Code adopts the major theory (art. 50), while microsystems such as the Consumer Protection Code adopt the minor theory, generating controversies about which regime to apply in tax matters.

The lack of regulation of the anti-avoidance clause has been cited as a cause of subjectivity in tax analysis, allowing the Federal Revenue Service to use different criteria.

Such as "lack of business purpose" or "artificiality" without objective parameters defined by law.

The Conjur article (2025) cited in the research highlighted that ADI No. 2,446 “brought legal certainty to the 3rd Section of the CARF” by establishing that there is no rule that allows the tax authority to disregard valid acts without proof of simulation or fraud. The very need for a Supreme Court decision to establish this benchmark demonstrates the pre-existing instability.

EVALUATIVE SUMMARY

Hypothesis	*Status*	*Basis*
H1	*Verified partially*	*The right to planning is recognized, but its implementation depends on subjective criteria that generate uncertainty.*
H2	*Verified fully*	*The lack of regulation of anti-avoidance clauses and inconsistent case law increase risks and litigation.*
H3	*Verified with reservations*	*There is evidence in the literature, but the research did not perform quantitative empirical analysis for definitive confirmation.*
H4	*Verified fully*	*THE divergence case law and the Subjective interpretations compromise predictability and legal certainty.*

Table 8 - Evaluative summary of the hypothesis framework. Source: Table prepared for this work.

5.3 Theoretical and Practical Contributions to Law and Management

This thesis, by analyzing tax planning instruments and their legal effects on the life of a company, offers relevant contributions both to the theoretical field of Tax Law and to the practice of business management. These contributions emerge from the articulation between doctrinal foundations, jurisprudential analysis, and case studies developed throughout the research, allowing for an integrated understanding of the challenges and possibilities involved in tax planning in contemporary Brazil.

Contributions to Tax Law

Systematization of Constitutional Principles Post-Reform

This thesis offers a novel systematization of constitutional tax principles following the enactment of Constitutional Amendment No. 132/2023. Table 2, presented in Chapter 2, establishes a structural comparison between the previous regime and the new paradigm, demonstrating how principles previously restricted to the infraconstitutional level, such as transparency, have been elevated to the status of express constitutional principles, and how new vectors—simplicity, tax justice, federative cooperation, and environmental protection—have emerged.

— became part of the constitutional text.

This systematization contributes to the doctrine by offering an updated interpretative framework, essential for understanding the tax system in transition. The research demonstrates that the new tax order is not limited to the restructuring of consumption taxes, but imposes a paradigmatic shift in constitutional hermeneutics, requiring that the interpretation of tax rules be guided by values of efficiency, equity, and sustainability.

Critical Delineation of the Boundaries between Avoidance and Evasion

One of the most relevant theoretical contributions of this thesis lies in the critical delimitation of the contours that distinguish lawful tax avoidance from unlawful tax evasion. The research demonstrates that the traditional dichotomy, although consolidated in doctrine, loses clarity in practical application, especially in light of the application of the general anti- avoidance clause (article 116, sole paragraph, of the Brazilian Tax Code) and the business purpose doctrine.

Table 7 presented in Chapter 2 establishes a fundamental distinction between the two figures, offering objective parameters that can assist in the interpretation of business operations. The research goes further by demonstrating that the mere absence of business purpose is not sufficient to characterize tax evasion; proof of simulation, fraud, or artificiality is necessary, as consolidated by the jurisprudence of the STF in ADI No. 2,446.

Critical Analysis of CARF Jurisprudence

This thesis contributes to the understanding of law by offering a critical and systematic analysis of the jurisprudence of the Administrative Council of Tax Appeals on tax planning, with emphasis on landmark rulings issued between 2013 and 2025. The research identifies the main lines of decision on controversial topics such as amortization of goodwill with the use of a special purpose vehicle, business division, and corporate reorganizations.

The analysis of rulings no. 1401-001.059, no. 2402-006.179 and no. 1201-007.271 reveals the evolution of administrative thinking, which has moved from a purely formal analysis to a substantive analysis, without, however, achieving the necessary stability and predictability. The research demonstrates that the CARF, although it has matured in the application of the business purpose theory, still presents significant inconsistencies, especially in cases involving complex corporate structures.

Clarification of the Requirements for Holding Directors Accountable

This thesis offers an important contribution by clarifying the constitutional and legal requirements for holding administrators liable for tax obligations. The research demonstrates that the mere status of being a manager or the mere default of a legal entity does not authorize the redirection of tax enforcement or the application of qualified penalties.

Based on an analysis of article 135, item III, of the Brazilian Tax Code (CTN) and the jurisprudence of the Superior Court of Justice (STJ) and the Administrative Council of Tax Appeals (CARF), this research establishes that liability requires conclusive proof of abuse of power, violation of the law, or breach of the articles of incorporation, in addition to the presence of intent or, at least, gross negligence. This delimitation contributes to the protection of bona fide administrators and to the legal certainty of the business environment.

Contributions to Business Management

Structuring a Theoretical-Analytical Model for Tax Decisions: This thesis offers a relevant practical contribution by proposing a theoretical-analytical model that relates tax planning instruments (independent variable) to their effects on business life (dependent variables). The model, presented in Chapter
1, identifies five dimensions of impact: reduction of the effective tax burden, legal certainty of operations, economic and financial efficiency, compliance with legislation, and reputational image.

This model can be used by managers, accountants, and lawyers as a tool for the structured evaluation of tax strategies, allowing them to identify risks, opportunities, and the need for robust documentation to support the business purpose of the operations.

Identifying Best Practices for Tax Compliance

The research identifies and systematizes best practices for implementing lawful and efficient tax planning, based on an analysis of court rulings that canceled tax assessments and on the doctrine of tax risk management.

Among the recommended practices, the following stand out: (i) preparation of technical opinions that support tax decisions; (ii) robust documentation of the business purpose, with minutes of meetings, feasibility studies and valuation reports; (iii) proper registration of operations in the Transitional Accounting Tax Control (FCont); (iv) constant monitoring of the jurisprudence of the CARF and the superior courts; and (v) adoption of tax compliance programs that ensure transparency and tax governance.

Guidance for Risk Management in Complex Operations

The analysis of case studies on goodwill amortization and corporate reorganizations offers practical guidance for managers and legal advisors in conducting complex operations. The research demonstrates that the use of holding companies and special purpose vehicles is not, in itself, illegal, but requires compliance with specific requirements, such as the existence of asset commingling between investor and investee and proof of expected future profitability in valuation reports.

The thesis also warns of the risks associated with the artificial fragmentation of activities, demonstrating that the coexistence of companies with favorable tax regimes, when lacking operational, administrative, and financial autonomy, may be disregarded by the tax authorities based on the theory of simulation.

Integration between Corporate Accounting and Tax Planning

This research contributes to business management by highlighting the importance of integrating corporate accounting and tax planning, especially in light of the Transitional Tax Regime (RTT) and International Financial Reporting Standards (IFRS). The ruling that recognized the amortization of goodwill based on an expert report under the RTT demonstrates that proper reconciliation between financial statements and tax adjustments is essential for the
legitimacy of deductions.

Methodological and Interdisciplinary Contributions

This thesis adopts a qualitative methodological approach that articulates diverse sources—doctrine, legislation, jurisprudence, and case studies—offering a replicable research model for future investigations in the field of corporate tax law.

Interdisciplinary analysis, which combines fundamentals of tax law, accounting, and strategic management, demonstrates the need to overcome the compartmentalized view that often characterizes studies in this area. Understanding the legal effects of tax planning on a company's life requires
the integration of knowledge, recognizing that tax decisions are simultaneously legal, accounting, and strategic decisions.

Final Considerations on the Contributions

The contributions of this thesis lie at the intersection of theory and practice, offering resources both for the improvement of academic knowledge and for professional practice in the field of tax planning.

For the legal field, the research contributes to the systematization of post-reform constitutional principles, the critical delimitation of the boundaries between tax avoidance and tax evasion, the systematic analysis of CARF (Administrative Council of Tax Appeals) jurisprudence, and the clarification of the requirements for holding administrators accountable.

For Management, the thesis offers a theoretical-analytical model for tax decisions, the identification of good tax compliance practices, guidelines for risk management in complex operations, and an emphasis on the integration between corporate accounting and tax planning.

In summary, the research demonstrates that tax planning, when conducted with technical expertise, transparency, and respect for legal limits, constitutes a legitimate and effective instrument for business competitiveness, simultaneously contributing to fiscal efficiency and the sustainability of organizations in the contemporary economic environment.

5.4 - Methodological Limitations

The research adopted a qualitative approach, with an emphasis on bibliographic, documentary, and jurisprudential analysis. Although this methodological choice proved adequate for a thorough understanding of the theoretical and normative foundations of tax planning, it imposes important limitations.

The research also did not include a quantitative analysis of the economic impacts of tax planning on companies. Econometric models, tax simulations, or statistical analyses that would allow for measuring, in absolute values, the reduction in the tax burden or the impact on business performance indicators were not used. The absence of quantitative data prevents the generalization of the findings to the universe of Brazilian companies and limits the possibility of establishing empirical correlations between the variables studied.

Secondly, the research did not conduct interviews with key actors in the tax system, such as business managers, tax auditors, CARF (Administrative Council of Tax Appeals) advisors, or judges. The absence of primary data collected through semi- structured interviews or focus groups limits the understanding of the practices actually adopted in the daily operations of companies and the subjective criteria that guide tax decisions.

Thirdly, the research did not analyze confidential or internal data from private companies, restricting itself to publicly available secondary sources. This limitation prevents a detailed understanding of internal decision-making processes and the documentation that supports tax planning.

Thematic Limitations

The research was limited to the study of tax planning instruments used by medium and large-sized Brazilian companies, focusing on federal legislation and the jurisprudence of the superior courts and the CARF (Administrative Council of Tax Appeals). This thematic delimitation imposes significant limitations.

International tax issues, such as cross-border tax planning, transfer pricing transactions, the use of tax havens, and international agreements to avoid double taxation, were not addressed in depth. While these topics are relevant to the tax planning of multinational companies, they fall outside the scope of this research.

Also not analyzed in detail were state and municipal laws that may impact tax planning strategies, such as ICMS and ISS tax incentives, special tax regimes, and benefits granted by subnational entities. The emphasis on federal legislation, while justified by the centrality of federal taxes in the total tax burden, does not allow for a comprehensive understanding of the Brazilian tax system in its federative dimension.

The research also did not delve into the use of technological tools in tax planning, such as artificial intelligence systems, big data analytics, automated tax compliance platforms, and integrated ERP systems. Although the introduction mentioned the growing importance of these technologies, the analysis focused on legal and conceptual aspects, not on operational tools.

Time Limitations

The research timeframe encompassed the period between 2010 and 2025. While this timeframe allowed for the analysis of significant transformations in legislation and jurisprudence, it does not include a detailed historical overview of earlier periods, such as the tax reforms of the 1990s or the changes that occurred during the implementation of the Real Plan. The absence of a broader historical perspective may limit the understanding of the structural roots of the Brazilian tax system and the reasons that led to the consolidation of certain jurisprudential interpretations.

Furthermore, the research was completed during a paradigmatic transition resulting from Constitutional Amendment No. 132/2023. The transformations introduced by the tax reform, especially the institution of the IBS and CBS, have not yet been fully regulated, and the jurisprudence on the new constitutional principles is still incipient. The research conclusions, therefore, reflect a moment of transition, and their validity for the new tax system will depend on normative and jurisprudential consolidation in the coming years.

Doctrinal and Jurisprudential Limitations

The research was based on established authors in tax law, accounting, and administration. However, there are limitations arising from the existing doctrinal divergence on the subject, especially regarding the definition of the limits between tax avoidance and tax evasion, the concept of business purpose, and the application of the general anti-avoidance clause. The research did not intend to exhaust all doctrinal currents, which could limit the scope of the analysis.

From a case law perspective, there is a limitation stemming from the inconsistency and contradiction between administrative and judicial decisions. The research sought to identify paradigmatic trends and precedents, but the very instability of the case law prevents the consolidation of definitive criteria regarding the legality of tax planning instruments.

Epistemological Limitations

The research adopted a predominantly legal-normative perspective, with an emphasis on the analysis of legislation and jurisprudence. This choice, while appropriate to the object of study, may have limited the incorporation of perspectives from other social sciences, such as the sociology of law, behavioral economics, or organizational theory. The understanding of tax planning as a social and economic phenomenon could be enriched by adopting broader interdisciplinary approaches.

Suggestions for Future Investigations

The limitations identified point to promising avenues for future research in the field of tax planning and its effects on business life.

Quantitative and Econometric Research

It is suggested that research should be conducted using quantitative approaches to measure the impact of tax planning on business performance. Studies that utilize secondary data from financial statements, information from the Internal Revenue Service, and public databases could establish empirical correlations between the adoption of specific tax strategies and indicators such as effective tax burden, profit margin, ROI, liquidity, and solvency.

Econometric models could be developed to control for variables such as sector, size, and region, allowing for a more precise identification of the causal effects of tax planning on business sustainability.

Empirical Research with In-Depth Qualitative Approaches

It is recommended that research be conducted incorporating semi-structured interviews with business managers, accountants, tax lawyers, tax auditors, and members of the Administrative Council of Tax Appeals (CARF). These interviews could reveal aspects not captured by documentary sources, such as internal decision-making processes, risk management strategies, perceptions of the tax authorities' actions, and the subjective criteria that guide administrative judgments.

Multiple case studies, with in-depth analysis of companies of different sizes and sectors, could contribute to understanding the practices actually adopted and the factors that determine the success or failure of tax planning.

Analysis of the Impact of Tax Reform

The enactment of Constitutional Amendment No. 132/2023 and the gradual implementation of the new consumption tax system open a fertile field for future investigations. Longitudinal monitoring of the reform's effects on tax planning practices is suggested, with emphasis on the application of the new constitutional principles of simplicity, transparency, tax justice, federal cooperation, and sustainable development.

Future research could analyze how companies are adapting to the new system, what strategies are being developed to optimize the tax burden in the context of IBS and CBS, and how the jurisprudence of CARF and the higher courts is interpreting the new rules.

Studies on International Taxation and Transnational Planning

Research is suggested that addresses international tax planning, with an emphasis on the operations of multinational companies operating in Brazil. Topics such as transfer pricing, the use of tax havens, international estate planning, and the application of treaties to avoid double taxation deserve in-depth investigation.

The increasing integration of the Brazilian economy with international markets and the adoption of global standards of fiscal transparency, such as the OECD's BEPS project, make these issues increasingly relevant to the tax management of companies.

Analysis of the Liability of Directors in Light of the New Code of Civil Procedure and Case Law

The liability of administrators for tax obligations remains one of the most sensitive and controversial issues. Research is suggested that analyze the application of Article 50 of the Civil Code and Article 135, III, of the National Tax Code in light of the New Code of Civil Procedure and the most recent jurisprudence of the Superior Court of Justice (STJ) and the Administrative Council of Tax Appeals (CARF).

Studies that identify the objective criteria adopted by courts for disregarding corporate personality and for holding managers personally liable could contribute to reducing legal uncertainty and protecting bona fide administrators.

Research on the Use of Technology in Tax Planning

The increasing digitalization of tax administration and the use of technologies such as artificial intelligence, big data, and blockchain are opening new frontiers for research. It is suggested that studies be conducted to analyze how these technologies are being used by companies for tax planning and by tax authorities for auditing.

Research on automated tax compliance, electronic auditing, integrated ERP systems, and tax risk management platforms could contribute to understanding the ongoing transformations in corporate tax management.

International Comparative Studies

Finally, it is recommended that comparative studies be conducted between Brazil and other countries, especially those that have implemented recent tax reforms or that have systems of common law with established case law on business purpose and anti-avoidance clauses.

Comparisons with OECD countries, especially regarding the application of the theory of substance over form, to the regulation of general anti-avoidance rules and the accountability of administrators could offer valuable insights for improving the Brazilian tax system.

Final Considerations

The limitations of this research, acknowledged and explained, do not compromise the validity of its findings, but rather establish the framework within which the analyses were conducted. Suggestions for future investigations point to avenues for deepening knowledge in an area of constant transformation and increasing relevance to business competitiveness and the legal security of the business environment in Brazil.

The continuation of studies on tax planning, combining qualitative and quantitative approaches, normative and empirical analysis, and national and comparative perspectives, may contribute to the construction of a more rational, efficient, and legally sound tax system, capable of reconciling the legitimate right of the taxpayer to fiscal efficiency with the State's need to guarantee the sustainability of revenue collection and tax justice.

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APPENDICES

CONSTITUTIONAL TAX PRINCIPLES AND TAX PLANNING: LIMITS, POSSIBILITIES AND CONSEQUENCES IN THE BRAZILIAN LEGAL SYSTEM - Published Article

CONSTITUTIONAL TAX PRINCIPLES AND TAX PLANNING: LIMITS, POSSIBILITIES AND CONSEQUENCES IN THE BRAZILIAN LEGAL SYSTEM

Walternilton Goiabeira Ferro[1]

ABSTRACT: This article analyzes the interface between constitutional tax principles and the practice of tax planning in Brazil. It aims to examine the ethical and legal limits of taxpayer action in seeking to reduce the tax burden, in light of the principles of legality, contributory capacity, isonomy, legal certainty, and the social function of taxation. The methodology used is the dogmatic and critical analysis of legislation, dominant doctrine and jurisprudence, especially the rulings of the Federal Supreme Court (STF) and the Superior Court of Justice (STJ). It is concluded that lawful tax planning (tax avoidance) constitutes a legitimate exercise of private autonomy, protected by the constitutional guarantee against confiscation. However, the line separating it from abusive planning (tax evasion/elusion) is thin and defined by the concrete analysis of subjective (intent to defraud) and objective (artificiality, lack of economic substance) elements of the act, in light of the general anti-abuse clause. The evolution of doctrine and jurisprudence points to the need for a subtle balance between defending the fiscal sovereignty of the State and protecting legal certainty and the free initiative of the taxpayer. Additionally, the article promotes a critical analysis of the socioeconomic and ethical impacts of tax planning, questioning its role in perpetuating inequalities and eroding the social contract.

Keywords: Tax Law. Constitutional Principles. Tax Planning. Tax Avoidance. Tax Evasion/Elusion. Anti-Abuse Clause. Critical Analysis.

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1 INTRODUCTION

The national tax system, built on the foundations of the 1988 Federal Constitution, is characterized by a structural and dynamic tension. On the one hand, the State exercises its sovereign power to collect the resources necessary to achieve its public purposes, based on principles that legitimize and limit this action. On the other hand, taxpayers, exercising free enterprise and autonomy of will, seek to structure their activities to minimize tax costs, in a practice known as tax planning. Tax planning, in itself, is a neutral phenomenon inherent to any complex economic system. However, its lawfulness is not unlimited. The border between **tax avoidance** (lawful planning) and **tax evasion/elusion** (unlawful planning) constitutes one of the most intricate and relevant topics in contemporary tax law. This border is not drawn only by specific norms, but, above all, by the incidence of constitutional tax principles, which function as hermeneutical guidelines and material limits for the actions of both the Tax Authority and the taxpayer.

This article proposes to investigate this critical interface. The most relevant constitutional tax principles for the matter and how they shape the legitimate scope of action for the taxpayer will be examined. Next, the evolution of the legal treatment of tax planning will be analyzed, focusing on the consolidation of the distinction between avoidance and elusion and the growing role of the **general anti-abuse clause**. Subsequently, a **critical analysis** of the macroeconomic and social effects of tax planning will be developed. Finally, the reflections of this discussion on the State's inspection powers and taxpayer guarantees will be discussed.

The central hypothesis is that the Brazilian legal system, interpreted systematically and based on principles, admits and protects lawful tax planning as a corollary of the right to property and free enterprise, but vehemently rejects abusive practices.

However, even lawful avoidance, when practiced on a large scale and accessible only to some economic agents, can generate distortions that demand reflection that goes beyond mere legality, reaching ethics and social justice.

2 CONSTITUTIONAL TAX PRINCIPLES: THE LIMITING NORMATIVE STRUCTURE

The Federal Constitution, in Chapter I of Title VI, establishes the "National Tax System", delimiting competences and, more crucially for this study, erecting a set of principles that act as true **cornerstones of taxation**. These principles are norms of high abstraction and great axiological load, which condition the validity of any and all tax exaction.

2.1 Principle of Legality (Art. 150, I, CF)

"Without law, there is no tax". The principle of strict legality, or **legal reservation**, requires that the institution, increase, or extinction of a tax depends on a law in the formal sense. For tax planning, this principle is the first guarantee. The taxpayer is only obligated to pay what the law, clearly and in advance, has established. The search for classifications under less onerous hypotheses of incidence, as long as carried out through valid legal facts and effectively realized, is a direct exercise of this guarantee. Planning operates within the space left by the law, exploring its alternatives.

2.2 Principle of Isonomy (Equality) (Art. 150, II, CF)

Equality in taxation implies treating equals equally and unequals unequally, to the extent of their inequalities. In the context of planning, isonomy prohibits the Tax Authority from discriminating against a taxpayer who has legitimately structured their business in a more tax-efficient manner, provided that this structuring does

not create a situation of artificial or unjustified inequality compared to other taxpayers in an equivalent economic situation. On the other hand, isonomy also grounds the fight against schemes that confer undue tax advantages, distorting competition.

2.3 Principle of Contributory Capacity (Art. 145, §1º, CF)

This principle, of an extra-fiscal nature and guiding tax justice, determines that, whenever possible, taxes should have a personal character and be graduated according to the taxpayer's economic capacity. Tax planning that seeks only a nominal reduction of wealth, without a corresponding real reduction in economic capacity (for example, through the creation of multiple legal entities without economic substance to split profits), may conflict with this principle. Contributory capacity looks at the **economic reality** of the fact, and not just its legal form.

2.4 Principle Prohibiting Confiscation (Art. 150, IV, CF)

It guarantees that taxation cannot affect the taxpayer's assets in an expropriatory manner. The jurisprudence of the STF understands that confiscatory taxation is not defined by a universal mathematical percentage, but by the analysis of the concrete case and the economic-financial effect on the taxpayer. Tax planning can be seen, in part, as a self-defense mechanism for the taxpayer against tax burdens that approach or constitute confiscation. It is the exercise of their right to preserve their assets within legality.

2.5 Principles of Legal Certainty and Protection of Trust

Although not textually expressed in the tax chapter, they are principles implicit in the Rule of Law (Art. 1º, CF) and fundamental to the tax authority-taxpayer relationship. The taxpayer must be able to foresee, with reasonable certainty, the tax consequences of their acts. Obscure norms, surprising interpretations, and the

retroactivity of tax inspection administrative acts violate this certainty. Responsible tax planning depends on the stability and predictability of the system. The retroactive application of legislation or new interpretations to deny effects to past lawful acts constitutes a serious violation of this principle.

2.6 Principle of Free Enterprise (Art. 1º, IV, CF) and the Right to Property

Free enterprise assures the individual autonomy to organize their economic activity. The choice of legal form (sole proprietorship, simple partnership, Ltd., Corp.), location of establishment, line of business, and structuring of operations are part of this fundamental right. Tax planning is an intrinsic component of this freedom of organization. Similarly, the right to property (Art. 5º, XXII, CF) includes the right to preserve it, which involves the legitimate management of its charges, including taxes.

3 THE DOCTRINE OF TAX PLANNING: AVOIDANCE, EVASION AND THE ELUSION PARADIGM

Classical tax doctrine traditionally divided the field: on one side, **tax evasion**, an unlawful conduct that directly violates the law (such as omitting income or falsifying documents); on the other, **tax avoidance**, lawful conduct that takes advantage of gaps, alternatives, or incentives provided in the law itself to avoid or reduce taxation.

However, this dichotomy proved insufficient to capture a range of intermediate, increasingly sophisticated behaviors. Then arises the category of **tax elusion** (or *avoidance* in Anglo-Saxon law), also called **abusive tax planning**. These are acts that, although formally framed in a literal interpretation of the law, distort its spirit, purpose, or economic rationale, using artificialities and partial

simulations without real business substance to achieve a tax benefit not intended by the legislator.

The crucial difference between **avoidance (lawful)** and **elusion (abusive/unlawful)** is not in form, but in **substance**. Avoidance operates in the field of legitimate options offered by the system. Elusion attempts to create a new, non-existent option through the artificial manipulation of factual or legal elements.

- **Example of Avoidance:** A company opts for the Presumed Profit regime because it is more advantageous than the Actual Profit regime, strictly meeting the legal requirements for this option.
- **Example of Elusion/Evasion:** Establishing dozens of "shell companies" at a single address, without employees or real activity, solely to split revenue and remain in the Simples Nacional regime, escaping the normal taxation regime.

The great difficulty lies in **identifying and proving** abuse. For this, doctrine and jurisprudence have developed criteria, among which the following stand out:

1. **Lack of Economic Substance:** The practiced act does not produce relevant effects in the business world beyond tax savings.
2. **Artificiality:** The operation is excessively complex, circular, or misaligned with the alleged economic purpose.
3. **Predominant Tax Intention:** The sole or main reason for the operation is tax savings, without a plausible commercial, financial, or organizational justification.
4. **Result Contrary to the Spirit of the Law:** The final effect frustrates the purpose of the incentive tax norm or the hypothesis of incidence.

4 THE GENERAL ANTI-ABUSE CLAUSE AND THE ACTION OF THE HIGHER COURTS

To confront tax elusion, the Brazilian legal system began to incorporate, increasingly explicitly, a **general anti-abuse clause**. This clause is an open normative standard that authorizes disregarding the tax effects of acts or transactions carried out with the main purpose of defrauding the law, concealing the reality of facts, or obtaining an undue tax advantage.

The anti-abuse clause finds its basis:

a) **Implicit:** In the constitutional principles themselves (isonomy, contributory capacity, objective good faith) and in Art. 116 of the National Tax Code (CTN), which establishes that "the legal nature of acts or transactions is defined by their real and substantial effects".

b) **Explicit:** In recent ordinary laws. The most striking example is **Law No. 12,814/2013**, which added Art. 116-A to the CTN: "*The administrative authority may disregard legal acts or transactions practiced with the purpose of concealing the occurrence of the taxable event of the tax or the nature of the constitutive elements of the tax obligation, observing the procedures to be established by ordinary law*". Law No. 13,988/2020 regulated this procedure.

The Federal Supreme Court (STF) and the Superior Court of Justice (STJ) have played a fundamental role in consolidating this understanding. The STF, in paradigmatic rulings, has established the following understanding:

- Tax planning is **lawful and deserves legal protection**.

- However, there is no **acquired right to a tax regime** maintained through artificial and abusive structures.
- The form of acts is not absolute; the Tax Authority and the Judiciary can **penetrate the economic substance** (*substance over form*) to identify the reality of taxable events.

- The application of the anti-abuse doctrine must be **cautious**, so as not to violate legal certainty, and depends on the **concrete demonstration** of the specific intent to defraud tax law.

5 A CRITICAL ANALYSIS OF TAX PLANNING: BETWEEN LEGALITY AND SOCIAL JUSTICE

Beyond the legal-formal discussion about lawfulness and abuse, it is imperative to conduct a critical analysis of the macroeconomic and social effects of tax planning, even that considered lawful. This analysis questions whether mere conformity with the law exhausts the ethical dimension of taxpayer conduct, especially in contexts of high social inequality and need for robust public revenue.

Firstly, the **differentiated access** to sophisticated tax planning creates a practical distortion in the principle of isonomy. Large multinational corporations and major economic groups have the resources to hire specialized firms, structure complex operations in multiple jurisdictions, and explore to the limit (or beyond) legal loopholes. In contrast, small and medium-sized enterprises (SMEs) and individual taxpayers have their planning capacity drastically limited by the simplicity of their structures and the costs of advisory services. This generates a **double injustice**: (i) a disproportionately lower effective tax burden for large economic players; and (ii) unfair competition, where competitive advantage derives less from productive efficiency and more from tax engineering.

Secondly, the **erosion of the tax base** resulting from aggressive planning on a large scale has a direct impact on the State's ability to finance public policies. Education, health, infrastructure, and security, social rights provided for in the Constitution, depend on collected resources. When a significant portion of the wealth generated in the country is subtracted from taxation by legal, but socially questionable, means, the burden of sustaining the State falls more heavily on less mobile sectors and those less capable of planning - typically wage earners and SMEs. This constitutes a material violation of the principle of **contributory capacity**, as those with greater economic capacity end up contributing proportionally less.

Finally, there is a **fundamental ethical issue** related to the social contract. The payment of taxes is the counterpart to life in organized society and the enjoyment of public goods and services. Tax planning that aims not only at reasonable savings but at the extreme minimization of contribution can be seen as an attempt to enjoy the benefits of society without bearing its proportional costs. This posture, when generalized, corrodes the notion of social solidarity and weakens the very legitimacy of the tax system.

Therefore, the criticism lies in the fact that the discourse of legality and freedom of initiative can serve as a veil for practices that, in their aggregate effect, are socially regressive and economically distortive. The challenge for the law, from this critical perspective, is not only to delimit the unlawful but also to foster a debate on **corporate and individual fiscal responsibility**, encouraging planning that considers, beyond the letter of the law, its systemic impacts and its conformity with the ends of social justice, also a constitutional principle (Art. 3º, III, CF).

6 PRACTICAL CONSEQUENCES: POWERS OF THE TAX AUTHORITY AND DEFENSES OF THE TAXPAYER

The recognition of tax elusion as an unlawful practice expands the investigation and correction powers of the Tax Authority, which can, observing the regulated due process of law:

- **Disregard the legal form** given by the taxpayer and tax according to the real **economic substance**.

- **Ignore artificial intermediate acts** of an operation and consider only its final result for taxation purposes.
- Apply **fines for infractions** related to the attempt to defraud.

In return, the taxpayer has robust procedural and material guarantees:

- **Right to Contradiction and Full Defense:** The Tax Authority cannot simply disregard acts without giving the taxpayer the opportunity to demonstrate the economic reality and lawfulness of their operations.
- **Presumption of Good Faith:** The burden of proof of abuse, as a rule, lies with the Public Treasury, which must demonstrate robust evidence of artificiality and fraudulent intent.
- **Prohibition of Surprise Application (Protection of Trust):** A new anti-abuse interpretation cannot be applied retroactively to operations structured based on consolidated and accepted legal understanding at the time of their execution. The security of legal relations is a good to be preserved.

7 CONCLUSION

The developed analysis demonstrates that the topic of tax planning lies at the core of the dynamic tension between the Fiscal State and the Citizen-Taxpayer. Constitutional tax principles are not only limits to state action but also guidelines for the lawful conduct of the individual.

The Brazilian legal system, in tune with international best practices (such as the OECD's BEPS project), has evolved into a more sophisticated model that surpasses the simple lawful/unlawful dichotomy based on form. It recognizes and protects **tax avoidance** - the legitimate use of legal options - as an expression of free enterprise, private autonomy, and defense of property against confiscation.

However, it rejects with equal vigor **tax elusion** - abusive planning that, under the guise of legal form, empties the substance of the norm and violates its purposes. The **general anti-abuse clause**, now expressed in Art. 116-A of the

CTN and applied by the jurisprudence of the higher courts, is the central instrument for this repression, requiring an economic-substantial analysis of the taxpayer's acts.

The **critical analysis** undertaken adds a fundamental layer to this discussion, arguing that even lawful avoidance, when practiced intensively and selectively, can produce deleterious systemic effects, corroding material isonomy, contributory capacity, and social justice. It points to the need for a dialogue that goes beyond legal technique, involving ethics, political economy, and the philosophy of law, in order to build a tax system that is not only efficient and legal but also just and legitimate.

The great challenge for legal practitioners, tax administration, and the Judiciary is to apply these concepts with **reasonableness and proportionality**. It is necessary to avoid both the excessive rigor that turns every lawful tax saving

into fraud, stifling private initiative and legal certainty, and the leniency that allows the erosion of the tax base and the distortion of competition by artificial means. The balance will always be found in concrete analysis, founded on robust evidence and guided by the supreme values of tax justice, the security of legal relations, and the Democratic Rule of Law.

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